

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA :
vs. : H-09-CR-336
: HOUSTON, TEXAS
: APRIL 28, 2010
: 8:09 A.M.

BRENT A. CARTER and
MICHAEL N. SWETNAM, JR.

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TRANSCRIBED

TRANSCRIPT
BEFORE THE HONORABLE

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

TESTIMONY OF BRENT CARTER, VOL. 2 OF 2
EXCERPTED FROM TRIAL DAY 7 OF 9

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Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

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21
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1 P R O C E E D I N G S

2 *(Jury present)*

3 THE COURT: Thank you. Please be seated. Ladies and
4 gentlemen, welcome. Good morning, and thank you so much for
5 your continued punctuality throughout this trial.

6 Let me tell you what is in store. We are going
7 to finish with testimony today. And we may very well at that
8 point give you a break and let you go home early. You'll get
9 paid for the full amount, of course. We may then just adjourn
08:09 10 early.

11 We'll ask you to be back tomorrow morning at the
12 usual time. Tomorrow morning, first I'll give my instructions,
13 kind of like the instructions I gave you at the beginning. And
14 then we'll hear arguments of counsel, and then you begin your
08:09 15 deliberations.

16 As I always tell jurors when they ask about how
17 long deliberations will take, they'll take as long as they need
18 to. I just don't know. I've had cases where I thought the
19 jury would be back in 30 minutes and they took a day and a
08:10 20 half. I've had cases just the opposite, where I thought it
21 would take a day and a half and they came back in an hour. I
22 mean, I just don't know.

23 You may not even know. If you followed our
24 instructions about not discussing the case among yourselves,
08:10 25 you don't even know what your colleagues are thinking.

Colvin Direct of Carter

08:10 1 But once we do give it to you, I promise I'll
2 ride with you for as long and in whatever way you want. If you
3 want to continue the usual schedule of 8:00 to 4:00, that's
4 fine. If you want to stay late and get it done tomorrow,
5 that's fine, too. I'll do whatever you want me to do.

6 Okay. With that, why don't we proceed with the
7 rest of Mr. Carter's testimony?

8 **BRENT CARTER, DULY SWORN, TESTIFIED:**

9 **DIRECT EXAMINATION**

08:11 10 BY MR. COLVIN:

11 Q. Good morning, Mr. Carter.

12 A. Good morning, sir.

13 Q. I believe we left off -- I know I kind of jumped around
14 yesterday a little bit, but I believe we left off on or about
08:11 15 September 5, 2007. Do you remember that?

16 A. It was 2006.

17 Q. 2006?

18 A. Yes, sir.

19 Q. I'm sorry. I apologize. September 7 -- September 5, 2006.
08:11 20 And that was when you heard for the first time from Mr. Swetnam
21 that there was a problem with the windstorm coverage?

22 A. Yes, sir.

23 Q. Did you keep any kind of record of what you were doing
24 during this time period, this September time period, of 2006?

08:11 25 A. Yes, sir. I was keeping a journal.

Colvin Direct of Carter

08:11 1 Q. And what was the purpose of that? Why were you doing it?
2 A. Well, two reasons really. I'd been getting some pressure
3 from Mr. Reagan at Smith-Reagan regarding new business
4 production. And he was pretty adamant that I needed to produce
08:12 5 more small commercial accounts, and he was kind of wanting to
6 chronicle my time a little bit just mentally between he and I.

7 And the other reason was there was some criticism
8 within the agency that -- you know, little stinging remarks
9 that, you know, "Carter is making so much money but all he does
08:12 10 is play golf with the CEO"; and I was kind of getting beat up a
11 little bit by my colleagues. So, I made a journal.

12 Q. And what were you trying to demonstrate in the journal?

13 A. Well, I ended up just keeping it for myself; but I was
14 marking all the time that it really took to -- the trips to and
08:12 15 from the hospital, the time that I was there.

16 You've been to a hospital. You park 4 miles
17 away. By the time you get to where you're going, you would
18 walk -- it took a half hour to go into the building.

19 So, I was just keeping up with that mostly for
08:12 20 myself; but over time I kept it for a record in case I was
21 asked.

22 Q. Okay. Was there any criticism about the time you were
23 actually working on the Valley Baptist account or whether you
24 were really working on the Valley Baptist account?

08:13 25 A. No, sir.

Colvin Direct of Carter

08:13

1 Q. Substantive work, I mean.

2 A. Well, yes, sir. In that regard, it was -- like I said, it
3 was reduced to I'm just doing the social stuff, you know,
4 "Carter is just doing the social stuff," and, you know, "Why is
5 he making so much money," was kind of the deal.

6 Q. And where was this criticism coming from specifically?
7 Everybody or --

8 A. Mostly Joe Reagan, yes, sir, Joe Reagan.

9 MR. COLVIN: Your Honor, let the record reflect I'm
08:13 10 showing the exhibit to Mr. McConnell.

11 THE COURT: Very well. The record will so reflect.

12 MR. McCONNELL: Your Honor, this is the first time
13 we've seen this journal. I would like some time to study it.

14 MR. COLVIN: That's fine, your Honor. I was just
08:14 15 going to let him identify it. I'm not offering it -- I don't
16 have to offer it at this point. I just --

17 THE COURT: Well, it looks like it's of some length;
18 and it does seem substantive. Was there a reason it wasn't
19 produced before?

20 MR. COLVIN: I don't believe -- I don't believe it was
21 ever requested of us before. We did not really have it marked
22 as an exhibit or intend to offer it.

23 MR. McCONNELL: It's marked as an exhibit, your Honor.

24 MR. COLVIN: We marked it this morning.

25 MR. McCONNELL: I think the Court asked we disclose

Colvin Direct of Carter

08:14

1 all exhibits --

2 MR. COLVIN: I didn't intend to use it as an exhibit,
3 your Honor, but --4 THE COURT: What's it being used for, then? To
5 refresh his recollection?

6 MR. COLVIN: Yes, your Honor.

7 MR. McCONNELL: I don't have an objection to using it
8 for that purpose.9 THE COURT: Okay. It's not going to be admitted,
08:14 10 though.

11 BY MR. COLVIN:

12 Q. I just show this -- what's that marked as, Mr. Carter?

13 A. Exhibit 131.

14 Q. Carter Exhibit 131. And is that, in fact, the journal that
08:15 15 you were keeping during that time?

16 A. Yes, sir.

17 Q. Now, is it -- can you tell the jury whether or not there's
18 any detail to it?19 A. It's mostly just scribbled notes, and I kept just marks of
08:15 20 the time that I was spending in and at the facility. That's
21 really what it is. It's just a time clock, but I made little
22 notes of why I was at the hospital.23 Q. Now, using this journal to refresh your recollection, was
24 there another conversation with Mr. Swetnam about the windstorm
08:15 25 coverage for '06-'07?

Colvin Direct of Carter

08:15 1 A. Yes, sir. I have a note on 9-7. There's several pieces to
2 it, but down here it says --

3 MR. McCONNELL: Objection, your Honor. You can use it
4 to refresh your recollection --

08:15 5 MR. COLVIN: Yeah.

6 THE WITNESS: Okay. Yes.

7 BY MR. COLVIN:

8 Q. I'm not asking you to read from it.

9 A. There are some notes.

08:15 10 Q. And generally what was that conversation?

11 A. Well, it really -- it wasn't a conversation. I just made a
12 note that I -- that I took a letter to Mr. Springfield's
13 office, and I just reference.

14 Q. Had Mr. Swetnam said something, though, about the '06-'07
08:16 15 coverage?

16 A. Yes. He said he was experiencing a meltdown and asked me
17 to deliver a letter.

18 Q. Okay. Did you -- was the letter -- were you able to read
19 the letter?

20 A. No, sir.

21 Q. Was it in an envelope?

22 A. Yes, sir.

23 Q. Was the envelope sealed?

24 A. Yes, sir.

08:16 25 Q. And were you told anything else about this coverage after

Colvin Direct of Carter

08:16 1 this second mention of the problem with it on the 7th?

2 A. Well, in conversation a couple of days later, I just said,
3 "Did you get your problem solved?"

4 And, you know, he said, "Yes. It's covered.

08:16 5 It's handled."

6 Q. And did you take that to mean that there was coverage on
7 the '06-'07 cover notes?

8 A. Yes, sir. I never assumed there wasn't coverage in the
9 interim either.

08:16 10 Q. Okay. You just thought it was a problem that needed to be
11 taken care of?

12 A. Yes, sir.

13 Q. All right. I want to talk to you about Exhibit 3A,
14 Mr. Carter. Let me see if I can get this -- this is Government
08:17 15 Exhibit 3A.

16 (Discussion off the record)

17 BY MR. COLVIN:

18 Q. And this is what?

19 A. This is an e-mail that I sent to Joe Reagan, David Smith
08:17 20 and Mike Swetnam, with an attachment.

21 Q. And what's the date?

22 A. October the 10th of 2006.

23 Q. And this is the "truth as I see it" e-mail?

24 A. Yes, sir.

08:18 25 Q. Are you upset at the time you send this?

Colvin Direct of Carter

08:18 1 A. Yes, sir.

2 Q. Had something happened -- had the principals of
3 Smith-Reagan been somewhere that prompted this e-mail?

4 A. Yes, sir. The three principals, Mr. Swetnam, Mr. Reagan
08:18 5 and Mr. Smith, had gone to an end-of-week and, I believe, part
6 of a weekend, like, management counseling seminar for the three
7 of them. And I got the results in our Monday morning meeting.

8 Q. And what were you -- were you criticized or --

9 A. I think they all learned some new management techniques and
08:19 10 then they all wanted to employ them on me.

11 Q. So, were you upset about this?

12 A. Yes, sir.

13 Q. Have you ever said anything you regretted?

14 A. Yes, sir.

08:19 15 Q. Ever written anything you regretted?

16 A. Yes, sir.

17 Q. Ever punch sand and wish you could take it back?

18 A. Yes, sir.

19 Q. Is this one of those things?

08:19 20 A. Absolutely.

21 Q. All right. We're going to have to look at this. And let
22 me show you what has been marked as Government's Exhibit 11-4.
23 This is the "painful truth" -- I'm sorry. I've got the wrong
24 one.

08:19 25 This is the "painful truth." Did you write this

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08:19 1 immediate -- how do you know -- do you remember how soon after
2 the meeting that you -- the Monday morning meeting you wrote
3 this?

08:20 4 A. Well, I felt kind of blasted in the meeting; and I waited
5 until that afternoon, basically just stewed on it all day and
6 sat down Monday evening after work and just started ranting.

08:20 7 Q. You remember the government's testimony, Mr. Boyden's
8 testimony, about the -- this first paragraph, "After the
9 painful truth from BC"? Read that paragraph, if you can, to
10 the jury.

11 A. "My last note of this tone fell on mostly deaf ears.
12 Remember me asking to be set free and allowed to use my endless
13 contacts? Well, somewhere around 1.85 million of income over
14 two years later, I have found my tongue and here I am."

08:20 15 Q. And do you remember Mr. Boyden's testimony about what the
16 significance of the million and eight-fifty was?

17 A. Yes, sir.

18 Q. That it was a million dollars from a million three policy
19 and \$800,000 from a \$936,000 policy, somehow, and they were
08:21 20 added together and that showed you knew something?

21 A. Yes, sir.

22 Q. Where did this number come from?

23 A. I was walking out of the office that afternoon; and I
24 leaned in and just asked Mike, "How much income does this
08:21 25 account do over the last couple of years?"

Colvin Direct of Carter

08:21 1 He said, "I don't know. A little under
2 2 million. A million eight, a million nine."

3 I just literally interpolated, just made up a
4 random number that I thought would be close.

08:21 5 Q. Is that why you said "over two years" in this e-mail?

6 A. Yes, sir.

7 Q. Because that's what he had said?

8 A. Yes, sir.

9 Q. Were you thinking about any specific policies or premiums
08:21 10 or coverages or commissions or anything else?

11 A. No, sir.

12 Q. Did it have anything to do with that?

13 A. Absolutely not.

14 Q. You know, we -- I want to respect everybody's time. And,
08:21 15 you know, we could go through this line by line by line.

16 You're basically -- on this paragraph about
17 "without pointing fingers," and then you point fingers, right?

18 A. Yes, sir.

19 Q. I mean, that's really what you're doing?

08:22 20 A. Yes, sir.

21 Q. You basically talk about what's wrong with everybody?

22 A. Yes, sir.

23 Q. And basically you're talking -- you're probably talking
24 about what's wrong with them. Is that fair to say?

08:22 25 A. Yes, sir.

Colvin Direct of Carter

08:22 1 Q. And let me -- let's turn to the next page. It's 11-4A, I
2 believe. Let's go to the second paragraph, where it says, "For
3 example, as we ramble about." Could you read that to the jury?

4 A. Yes, sir. "For example, as we ramble about running
08:23 5 Smith-Reagan as a corporation, I have to ask myself" --

6 THE COURT: Slowly, now, slowly.

7 THE WITNESS: I'm sorry.

8 THE COURT: "How many producers."

9 A. -- "how many producers, anywhere, with a \$250,000 gross
08:23 10 revenue book, not counting house business that was bought or
11 walked in, collected a check for \$250,000 off one account? Can
12 you really afford to be accountable as your staff lives
13 paycheck to paycheck?"

14 BY MR. COLVIN:

08:23 15 Q. Now, I want to ask you two or three things about this. Who
16 are you talking about?

17 A. I'm talking about Mr. Reagan.

18 Q. Why are you saying that?

19 A. Well, being the youngest --

08:23 20 Q. Let me ask just -- let me be more specific.

21 What are you talking about on this \$250,000?

22 A. Oh, that's the income that I knew he made off of the Zurich
23 policy.

24 Q. And -- okay. So, go ahead and tell the jury what you're
08:24 25 talking about regarding Mr. Reagan and his commission on that.

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08:24 1 A. Well, I think -- for me, I had never made the kind of money
2 that I was blessed to be making at that time. And we had a
3 number of people in the agency that were -- there were ladies
4 that worked there for nine or ten dollars an hour, that had
08:24 5 forgotten more about insurance than I knew.

6 And I just felt like -- we always talked about
7 them being our biggest resources at the agency; and, yet, it
8 was just -- they didn't get their checks until the end of the
9 day on payday. They would go to me at lunch time and go, "Hey,
08:24 10 Brent, can you help us get our checks? We need to put them in
11 the bank."

12 I just wanted the agency to be accountable on
13 things that really mattered as opposed to talking about
14 accountability among producers.

08:24 15 Q. Okay. What about the next paragraph?

16 A. Would you like me to read it?

17 Q. Can you -- if you need to, to just tell the jury generally
18 what you're talking about, would it be easier if you read it?

19 A. Well, one sentence says, "I was offended last year when I
08:25 20 asked David for a detail of the expenses on the account kept by
21 Valley Baptist and was questioned about my motives. I simply
22 wanted to know where all the money went that I was supposedly a
23 partner in."

24 I didn't understand some of the income that was
08:25 25 earned and was never given an accounting of how much money was

Colvin Direct of Carter

08:25 1 actually earned from the account. And it frustrated me
2 because, you know, in the meetings it would be, "You know,
3 Brent, you're our partner on this. Thanks for your help. And,
4 you know, you're really helping the agency with your contacts,"
08:25 5 but I was still kept in the dark about the majority of the
6 account.

7 Q. And how long were you asking for an accounting of how much
8 was being made, what the commissions were, what the income was
9 to the agency, where the money went, where it came from; how
08:26 10 long was this an issue for you at Smith-Reagan?

11 A. From a little bit before this time in '06 until after my
12 departure in December of '07.

13 Q. In fact, you're still writing e-mails in January of '08,
14 aren't you --

08:26 15 A. Yes, sir.

16 Q. -- about this being an issue; you want to know what's
17 really going on with the money and the income and the
18 commissions and the division?

19 A. Yes, sir.

08:26 20 Q. Was this one of the major causes of friction between you
21 and the principals, the owners of the company?

22 A. Absolutely.

23 Q. Was your desire to have an accounting just to find out
24 whether you should be making more money or did you have another
08:26 25 interest in knowing what was going on with the --

Colvin Direct of Carter

08:26 1 A. No. I just wanted to understand -- we would hear about
2 expenses; the agency had E & O insurance, the agency had
3 directors and officers insurance. And I would be kind of told,
4 "Well, don't worry about that. Some of it is being accounted
08:27 5 for this way, and some is being allocated to this or that."

6 And it's just -- I think the issue for me was I
7 was making more money than I had ever made in my life and at
8 the account, at the client's, I felt more important than I had
9 ever felt in my life but amongst the people that in theory were
08:27 10 my peers I felt kind of -- it's hard to make that much money
11 and feel unappreciated. Don't get me wrong. But I just felt
12 kind of disrespected and unappreciated. And I just wanted --
13 it just became, I guess, the burr in my saddle.

14 Q. You know, it's a -- do you think that you were thinking too
08:27 15 much of yourself because of your relationship with
16 Mr. Springfield and your importance to them -- to them keeping
17 this account?

18 A. Absolutely. You can read this -- I can read it to you now,
19 and it's still embarrassing. I mean, the whole thing is
08:28 20 written in the tone of, "It's my ball. And if you don't want
21 to play with me, then I'll just go home." And it's
22 inappropriate.

23 I had forgotten about it because years ago I had
24 tearful apologies to all three men regarding this and we put it
08:28 25 behind us. But the issue still lingered, but this stupid act

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08:28

1 on my part was put to rest.

2 Q. Okay. And the last paragraph, where you're talking about
3 you're servicing all the prominent accounts and you were "the"
4 agent in Harlingen, do you have anything you want to say about
5 that or add about that, that --

6 A. Well, I mean, I did handle a lot of the prominent folks;
7 but it's just the wrong attitude. I mean, there's no doubt I
8 was clearly insubordinate. I -- sometimes, being a
9 salesperson, I just always had the ability to say things that
08:29 10 other people were thinking; and I -- clearly, I just went too
11 far.

12 Q. Let me show you what has been marked as Exhibit 4 --
13 Government Exhibit 11-4B. And let me just direct your
14 attention to the second paragraph, where it talks about,
15 "One million plus in income is hard to replace, and I do
16 control it."

17 A. Yes, sir.

18 Q. "So, let's try to find a way to get along."

19 What are you talking about there? When you say,
08:29 20 "a million dollars in income, and I do control it," what are
21 you talking about there?

22 A. On that particular statement, I'm talking about the Valley
23 Baptist account.

24 Q. Okay.

08:29 25 A. And, I mean, I know it's over a million dollars. I don't

Colvin Direct of Carter

08:29 1 know how much income is in it, but I know it's over a million.
2 And I say I control it because I had the relationship with the
3 decision-maker.

08:30 4 Q. Okay. All right. And you say that you did -- there did
5 come a time where you were able to apologize to the people over
6 at -- apologize to the principals of the agency over --

7 A. Absolutely.

8 Q. -- this tirade?

9 A. I went to each one of them individually and collectively in
08:30 10 another Monday morning meeting and told them, "Look, I was out
11 of line. You know, I'm volatile and passionate; and I was
12 wrong."

13 Q. Let me show you Government's Exhibit 4H.

14 Well, let me just ask you. Do you remember the
08:31 15 government's exhibit where Mr. Swetnam was disclosing the
16 commissions to the hospital?

17 A. Yes, sir.

18 Q. Had you ever seen that before?

19 A. No, sir.

08:31 20 Q. When did you first see that document?

21 A. When it was produced in the civil lawsuit.

22 Q. And you did know that there was an issue about disclosure
23 on the commissions, right?

24 A. Yes, sir.

08:31 25 Q. And how did you come to find out that there was an issue

Colvin Direct of Carter

08:31 1 about that, I mean, an issue as far as the hospital was
2 concerned?

3 A. Well, I was with Mike at the hospital the day that Manny
4 brought it up. Mr. Vela brought up that he wanted some
08:31 5 information on the account, and they discussed it.

6 Q. And what was said?

7 A. Well, I remember -- I mean, I was -- I was listening to the
8 conversation and, at the same time, I knew that I had been told
9 that you didn't -- you didn't have to disclose commissions in
08:32 10 the State of Texas and I knew that it wasn't the agency's
11 policy to do so with any customer.

12 And Manny was kind of adamant, "I want this
13 information."

14 And Mike was kind of, "Well, why do you want it?
08:32 15 Who are you going to give it to? We don't like to give that
16 out."

17 Q. Now, were you really part of that particular conversation?
18 I mean, were you participating in that particular conversation?

19 A. I'm certain I would have said something, but it was -- Mike
08:32 20 is the principal in the agency, and Mike was definitely
21 handling the conversation with Manny.

22 Q. Now, did you have reservations about disclosing the
23 commissions?

24 A. Yes, sir.

08:32 25 Q. And what were your reservations?

Colvin Direct of Carter

08:32 1 A. Well, I knew that Mr. Springfield would take that and say,
2 "Well, if you guys made a million dollars last year, I want you
3 to handle the account this year but I'm going to put you on a
4 fee of 850 or 700 thousand" or he would have used it to drive
08:33 5 down our income.

6 Q. Was there -- did you have any issue about personally
7 disclosing what the commissions were?

8 A. I would -- I wouldn't -- I mean, personally I don't think
9 it would have bothered me; but professionally, I thought it
08:33 10 would have been, you know, suicide.

11 Q. With -- but explain what you mean by "suicide." Do you
12 mean that it would have cost money on how much you guys were
13 making or it would have caused you problems with the agency?
14 Or both?

15 A. Well, it wouldn't have caused me problems with the agency.
16 When I say "suicide," if I would have said anything at all --
17 number one, I didn't have the information. I mean, we just
18 discussed that. I didn't have the information.

19 But had I had it, I would have been fired on the
08:33 20 spot for discussing -- I mean, it was -- you just did not do
21 it. Outside of the agency, you didn't talk about the income on
22 any account.

23 Q. Now, could you tell the ladies and gentlemen of the jury --
24 tell all of us. You heard Mr. Vela's testimony about the
08:34 25 heated exchange between the two of you?

Colvin Direct of Carter

08:34

1 A. Yes, sir.

2 Q. Where did the heated exchange take place?

3 A. We were fishing out on the bay, on a boat.

4 Q. And do you remember that as a heated exchange?

5 A. No, sir. I mean, Manny and I were very close friends and I
6 believe, at the core, are still friends. And, you know, we're
7 both animated people; but I don't recall it being like an
8 argument or anything animated.

9 Q. Did anybody ask to be taken to the dock and dropped off?

08:34

10 A. No, sir. No.

11 Q. Anybody jump off the boat?

12 A. He did not walk off the boat.

13 Q. Did you spend the rest of the day together?

14 A. Yes, sir.

08:34

15 Q. Was it brought up again?

16 A. It was never brought up again, that day or after.

17 Q. Now, on the subject of how much you knew anyway at the
18 time -- I'm going to -- let me -- I'm going to show you.19 Let me hand these exhibits to counsel for the
08:35 20 government. It's Carter Exhibits 128, 129, and 130.

21 MR. COLVIN: These are just more e-mails.

22 Your Honor, I don't believe there's any objection
23 to Carter Exhibits 128, 129 and 130. I would offer them at
24 this time.

25 MR. McCONNELL: No objection, your Honor.

Colvin Direct of Carter

08:36 1 THE COURT: Admitted without objection.

2 BY MR. COLVIN:

3 Q. Let me put one of these on the overhead, Mr. Carter.

4 What is that e-mail?

08:36 5 A. It's an e-mail from me to David Smith, Joe Reagan and Mike
6 Swetnam.

7 Q. And what is the date on that e-mail?

8 A. November the 5th of '07.

9 Q. Now, this is after your what I'm going to call your

08:36 10 "rant" --

11 A. Yes, sir.

12 Q. -- "the truth as you saw it." Considerably after, right?

13 A. Oh, yes, sir. Almost -- over a year.

14 Q. But in the rant, you're wanting an accounting is one of the
08:36 15 things you were ranting about?

16 A. Yes, sir.

17 Q. So, a year later -- read this paragraph that begins, "The
18 problem lies."

19 A. "The problem lies in the fact that a producer, viewed at
08:37 20 least previously as an integral part of the agency's future,
21 has a legitimate concern, poses it to the correct forum of
22 management and gets no response at all."

23 Q. What are you talking about there?

24 A. Well, this is an e-mail that's a follow-up to an earlier
08:37 25 e-mail. There had been a -- what I am talking about there is I

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08:37 1 had asked for some accounting on the account.

2 Q. Okay. Read the next paragraph.

3 A. "Anything would be better for morale than totally ignoring
4 my e-mail. If there's something going on more important than
08:37 5 my concerns, please tell me so. David stresses communication,
6 openness and being in the loop; but it seems to be a one way
7 street."

8 Q. What are you talking about there?

9 A. Well, anything that I do, David wants a report on; but then
08:37 10 David's -- you know, it's a one-way funnel of communication.

11 Q. You wanted disclosure on what was being paid and what the
12 agency --

13 A. Yes, sir.

14 Q. -- was doing with it?

08:38 15 A. That's correct.

16 Q. And what about the next paragraph?

17 A. "Once again, Mike is the only one who shoots me straight
18 saying, 'Cut me a check.' My accounting is separate from SRA.
19 I have ordered funds to be remitted to SIS and should have them
08:38 20 tomorrow. All I wanted was the facts."

21 Q. Okay.

22 A. Can I tell you what that was?

23 Q. Yes.

24 A. There was a workers comp policy that I found -- I got a
08:38 25 note from Mr. Smith saying, "You need to bring a check in for

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08:38

1 \$12,500."

08:38

2 And I said, "Okay. Sure. But what's the deal?"
3 You know, because, I mean, he just wanted me to write him a
4 check for \$12,500. It was there -- apparently the hospital,
5 like, either canceled or restructured a workers comp program;
6 and the agency owed commission back -- \$50,000 commission, I
7 guess, needed to go back.

08:39

8 So, each one of the four of us had to write a
9 check for 12,500. At the end of the day, I was the only one
10 who had already given Mike the check. Mr. Smith hadn't and
11 neither had Mr. Reagan. And, you know, I -- it just struck me
12 wrong.

13 "You know, you guys call me, tell me to bring you
14 12,500 bucks, I get very little explanation about it, and, then
15 again, I'm the only one gets it done during that business day
16 and I'm just emphasizing again these are the problems I have
17 with you guys."

18 Q. All right. This is Exhibit -- Carter Exhibit 129 you've
19 been reading from, correct?

08:39 20 A. Yes, sir.

21 Q. Okay. Let me show you what has been marked as Carter
22 Exhibit 128. Can you tell us what that is?

23 A. This is the e-mail that I sent earlier in the day, that I'm
24 responding to that -- or that I'm adding on to that night.

08:39 25 Q. I may have put that in the wrong order.

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08:39 1 A. Yes, sir. This is the original e-mail.

2 Q. Okay. Read that second paragraph.

3 A. "The act of my writing a check brought back to mind my
4 request of five weeks ago that we go over the
08:40 5 income/expenses/accounting of the account."

6 Q. What about the following paragraph?

7 A. "It is with some intimidation that I approach you on this
8 matter since, A, I upset David three years ago with this
9 question and, B, my request of same this year has not been
08:40 10 addressed for five weeks."

11 Q. And what are you talking about here? The same thing?

12 A. Yes, sir.

13 Q. Wanting to know what's going on with this account, where
14 the money is coming from, where it's going to?

08:40 15 A. Yes, sir.

16 Q. Let me show you what has been marked as Exhibit -- Carter
17 Exhibit 130.

18 Now, that last e-mail you just read from, one of
19 the things you say is you've been asking about this for how
08:41 20 long? Do you remember?

21 A. Well, really since '05 and then -- so, '5, '6, '7 and now
22 we're in January of 2008.

23 Q. Okay. This was one of the major issues that you had, one
24 of the major issues you had with Smith-Reagan, that caused the
08:41 25 divisiveness and your attitude to change, the lack of

Colvin Direct of Carter

08:41 1 accounting on this --

2 A. Oh, yes, sir, that absolutely was the problem.

3 Q. All right. Showing you Exhibit -- Carter Exhibit 130. Who

4 is this from?

08:41 5 A. It's from me to Mr. Smith.

6 Q. And can you see the date on it?

7 A. January the 16th.

8 Q. Of what year?

9 A. 2008.

08:41 10 Q. Okay. And who are you writing to?

11 A. I'm writing to David Smith.

12 Q. Go down to the third paragraph, and read that to the jury.

13 A. "My asking for what I have revolves around the amount of

14 time it took to get paid, the lack of proper accounting and my

08:42 15 being made to feel ungrateful for asking about it. If that

16 needs to be discussed with Jim, so be it. I can't believe that

17 revelation will be more beneficial than agreeing to what I want

18 in order to continue the status quo. Do you want to tell Jim

19 it is your account? Okay. It is your account. How are you

08:42 20 going to renew it?"

21 Q. All right. Now, what are you -- you're threatening -- why

22 are you threatening meeting with Springfield?

23 A. Well, by January the 16th of '08 Mr. Smith has expressed

24 that he needs help renewing the account for the '08-'09 year

08:42 25 and he wants to work desperately with Mike. And I'm telling

Colvin Direct of Carter

08:43 1 him that I can help him work with Mike but that I want the
2 information that I've asked for in the past. I'm just --

3 Q. And the information you've asked for in the past is the
4 accounting on what Smith-Reagan is doing with the money --

08:43 5 A. Absolutely.

6 Q. -- where the money is coming from and what policy it's
7 attributable to, right?

8 A. Yes, sir.

9 Q. So, are there other e-mails about this division that occurs
08:43 10 between Mr. Swetnam and Mr. Smith?

11 A. Oh, yes, sir.

12 Q. And is -- are they -- is there a point where they're not
13 even speaking to one another?

14 A. Yes, sir. For -- actually, for several months. I'm not
08:43 15 positive, but I don't believe that -- I know I never saw them
16 speak to each other from November through -- November of '07
17 through April of '08.

18 Q. And were you being used as a mediator or go-between or
19 conduit once again --

20 A. Yes, sir.

21 Q. Were messages being passed back and forth between the two
22 of them through you?

23 A. Yes, sir, both ways. Predominantly from Mr. Smith, but
24 both directions.

08:44 25 Q. Did -- do you think from -- just from your grassroots sort

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08:44 1 of level, do you think Mr. Smith could have renewed all this
2 coverage without some technical help from Mr. Swetnam?

3 A. I don't believe so, no, sir.

4 Q. Do you really know from --

08:44 5 A. I don't know.

6 Q. Okay.

7 A. They both knew more than I did from a technical side, but
8 Mr. Smith didn't believe that he could do so because he was
9 wanting Mike.

08:44 10 Q. All right. Read this next paragraph, that begins, "Let me
11 know. I will set up a meeting if you desire."

12 A. "Let me know. I will set up any meeting you desire. They
13 know of no conflict on our parts, and we have none if you do
14 what makes sense and let me handle the account as I have for
08:45 15 three years. Otherwise, it may become more trouble than it is
16 worth. I can't fight them and you, too."

17 Q. What are you talking about there?

18 A. Well, at this point I'm still running around with
19 Mr. Springfield all the time but I haven't told him that I --
08:45 20 he knows that I have left and I'm no longer at Smith-Reagan but
21 I haven't bad mouthed them to the client. And I'm willing to
22 work with them and then share the income on the account with
23 them. Let Smith-Reagan handle it, let Mr. Swetnam be the
24 wholesaler, if you will, and we would split the income.

25 Q. Now, just -- I mean, your interest in trying to help with

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08:45 1 the account, you were interested in making money off of helping
2 with the account, right?

3 A. Absolutely, I was interested in the income.

4 Q. There was a monetary motive on your part for wanting to
08:45 5 continue to help?

6 A. Well, yes, sir. I mean, absolutely. I -- that's why I
7 worked, was to make the income.

8 Q. The last paragraph there is, "If you try and do it all,"
9 would you read that for the jury, please?

08:46 10 A. "If you try and do it all, you will lose it all. The door
11 will open for others and, without Mike and me, you will lose,
12 just as we would lose without you."

13 Q. Now, tell the jury what is going on. How has it become
14 Mike and me and Smith and Reagan and there's this division?
08:46 15 What's going on in January of '08 that's caused this?

16 A. Well, on January the 1st of '08 -- Mr. Swetnam had left the
17 agency back in November, and Mr. Swetnam was the person who
18 helped me place all of my commercial business. Mr. Smith,
19 Mr. Reagan and I, as agents, had very similar roles. I mean,
08:46 20 we were producers; whereas Mr. Swetnam was the guy that put the
21 account together.

22 When he left, my production -- my conduit to the
23 carriers basically dried up. And Mr. Swetnam had orchestrated
24 a new agency through Lone Star National Bank. It was a large
08:47 25 bank in the McAllen area. And we went to work for the bank on

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08:47

1 January the 1st.

2 Q. Why did you go with Mr. Swetnam on this new venture rather
3 than stay with Smith-Reagan?

4 A. Well, I've given the jury a little bit of background.

5 08:47 Mr. Smith at this point is about 63 and was looking to retire,
6 Mr. Swetnam is gone, and that would leave me with Mr. Reagan.

7 So, I -- you know, I decided it was a good time to move on.

8 Q. Okay.

9 A. And, Mr. Colvin, also I had insight that Smith-Reagan was
10 going to lose the business. The business was earmarked to go
11 to Alliant. And if that would have happened, my income would
12 have gone to nothing. So, we -- we took a new opportunity with
13 the bank.

14 Q. And what was the new opportunity at the bank? What were
15 08:48 you -- what had Mr. Swetnam started with Lone Star -- is it
16 Lone Star National Bank?

17 A. Yes, sir.

18 Q. What did he propose to them, what was he doing that you
19 wanted to join?

20 08:48 A. It was a retail agency, but it also -- the bank had become
21 very interested in setting up captives and offshore products
22 for some of their -- they had a lot of doctors that banked --
23 like, 300 doctors that banked at this bank. And the doctors
24 were interested in working on a medical malpractice program.

25 And the bank basically hired Mike for his

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08:48 1 expertise in that area. And through his contacts, we had
2 retail -- you know, Nationwide, people like that -- that we
3 could write insurance through. And I went to work over there
4 to sell what I had always sold.

08:49 5 Q. And was that program going to be a captive or not?

6 A. I mean, I believe that the program was -- Mike was going to
7 set up a captive for them.

8 Q. Okay. Are you sure about that or --

9 A. I'm not positive, no.

08:49 10 Q. Okay.

11 A. I would have been calling on the doctors to encourage them
12 to buy the med mal insurance.

13 Q. But would you have had anything to do with the captive or
14 with placing the coverage?

08:49 15 A. No, sir.

16 Q. Did you ever have anything to do with that, other than on
17 standard lines admitted carriers --

18 A. I don't know a thing about captives.

19 Q. What about this paragraph down towards the bottom, "I think
08:49 20 that a meeting with you, me" --

21 A. Can you slide that up?

22 Yeah.

23 Q. Can you see that on there?

24 A. No, sir.

08:49 25 It's from David.

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08:49

1 Q. What about that paragraph?

2 A. Let's see. David says to me, "I think that a meeting with
3 you, me, Jim and Manny or a combination thereof is important at
4 this time. It is foolish to think that VB will put up with a
08:50 5 bunch of conflict between the four of us. You by this e-mail
6 and the mandates have created a conflict with me. I have been
7 compliant, worked with you and Mike in any way possible in the
8 past."

9 Q. Okay. Now, what is the source of the conflict that you've
08:50 10 created with you and him?

11 A. Well, I guess I've offended him by asking for the
12 accounting.

13 Q. Okay. In other words, for asking for disclosures --

14 A. Yes, sir.

08:50

15 Q. -- on the commissions?

16 I believe it's marked as Government Exhibit 4. I
17 want to -- let me just ask this without showing you the other
18 policy.

08:50

19 You've seen in evidence the government exhibit of
20 the original insurance policy or binder sent from Zurich,
21 right?

22 A. Yes, sir.

23 Q. On the '06-'07? Do you recall that?

24 A. Yes, sir.

08:51

25 Q. And you saw the premium amount of one point -- whatever it

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08:51

1 was?

2 A. Three or four. Yes, sir.

3 Q. And had you seen that at any time when you were working at
4 Smith-Reagan?

08:51 5 A. No, sir.

6 Q. Had you seen a binder or an invoice from Zurich to the
7 company, that showed that premium amount on it?

8 A. No, sir.

9 Q. I'm going to show you what has been marked as Government
08:51 10 Exhibit 4 and ask you if you have seen it. First of all, what
11 is this?12 A. This is the Zurich, or Steadfast, declarations page for the
13 '06-'07 umbrella policy.14 Q. And what does it show -- and I'm not -- I'm not going to
08:52 15 ask you to be super specific or break it down, but what does it
16 show the Zurich premium to be?

17 A. It shows the premium to be --

18 Q. The total premium.

19 A. Oh, the total, 2.38 -- \$2,380,638.

08:52 20 Q. Let me try to adjust this where everybody can see it.

21 Can you see that better?

22 A. Yes, sir.

23 Q. So, the -- this premium showing the two million three
24 hundred and eighty thousand dollars six hundred and
08:52 25 thirty-eight dollars and forty-two cents [sic], Government

Colvin Direct of Carter

08:52

1 Exhibit 4, you had seen this?

2 A. Yes, sir.

3 Q. Is this the only thing -- or this premium amount, the only
4 thing you saw on this policy or related to this policy
5 regarding this coverage?

6 I don't mean that you -- I mean, this premium
7 amount, not necessarily just this document.

8 A. Yes, sir. This premium amount matched the invoice and the
9 binder. So, the policy, the invoice, and the binder all had
10 the same premium on them.

11 Q. Did you ever -- did you have any reason to believe that
12 this was not signed by the representative of Zurich?

13 A. No, sir.

14 Q. Did you have any reason to believe that the commission was
15 included in the original premium from Zurich? The 10 percent
16 commission.

17 A. No, sir.

18 Q. Did you know about a 10 percent embedded commission?

19 A. I did not.

20 Q. In fact, what had you been told about the commission and
21 the rate on this policy?

22 A. I had been told by Mr. Smith that this policy was ordered
23 from Zurich. He called it "flat," sometimes he called it
24 "net," sometimes he said "without commission." And that -- and
25 that -- because I had inquired about the income. And he said,

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08:54 1 "Well, if we don't add commission to it, we don't make any
2 money."

3 Q. All right. Let me turn to Government Exhibit 11-7, just
4 moving through these e-mails.

08:55 5 Is that legible?

6 A. Yes, sir.

7 Q. This is the "four horsemen" e-mail.

8 A. Yes, sir.

9 Q. And who is it from?

08:55 10 A. It's from David Smith.

11 Q. And when was it -- when does it seem to be sent?

12 A. April the 30th of '07.

13 Q. And who is it sent to?

14 A. Sherri is Sherri Garcia in our office, Mr. Swetnam, myself
08:55 15 and Joe Reagan.

16 Q. And go to the "four horsemen" paragraph and read that to
17 the jury.

18 A. "The four horsemen, Smith, Swetnam, Reagan and Carter, have
19 met on this several times and I thank you for pushing the item
08:55 20 to the forefront. Mike is the commanding officer on this
21 renewal process and will delegate work to each of us as he
22 determines prudent. Mike and you certainly should always be in
23 communication on what needs to be done and what the status of
24 the project is. The rest of us are assets which can and
25 probably should be used on a delegation from Mike basis."

Colvin Direct of Carter

08:56

1 Q. Okay. What prompted this e-mail?

2 A. Sherri was about to quit. She --

3 Q. Who is Sherri?

4 A. Sherri is the customer service representative assigned to
08:56 5 the Valley Baptist account.

6 Q. Okay.

7 THE COURT: Why was she going to quit?

8 THE WITNESS: She had gotten upset. She felt like she
9 was getting instructions from three or four people and -- are
08:56 10 you familiar with the phrase "seagull management"?

11 THE COURT: I don't think so. At least I'm not
12 willing to assume the jury is. That's more important than
13 whether I understand it.

14 THE WITNESS: Well, I'm not being glib; but she
08:56 15 referred to Mr. Smith as a "seagull manager" and said that he
16 would fly in once in awhile, squawk a lot, poop on everything
17 and leave. And she was very upset.

18 And I'm not trying to be funny. She was going to
19 quit. And Mr. Smith -- we had a meeting -- see, this is a
08:57 20 Monday e-mail, 11:42 a.m. We had a meeting on that Monday
21 morning at 7:30 and raised this concern to Mr. Smith that that
22 was the problem. And that's why -- he's writing this in
23 response. So, then -- he writes it to Sherri. He's trying to
24 calm her down.

25 BY MR. COLVIN:

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08:57 1 Q. Okay. And he says that, "Mike and Brent will meet with the
2 decision-makers at Valley Baptist next Wednesday." Do you see
3 that sentence?

4 A. Yes, sir. It says, "Wednesday, the 9th, at 1:00 to discuss
08:57 5 the renewal and other items."

6 Q. And what -- do you remember what renewal -- what policy
7 that was?

8 A. I'm certain Mike was going to give them an update on the
9 windstorm and the overall program. I think he had a Power
08:57 10 Point for them.

11 Q. Okay. Would you have been -- there are several
12 presentations made to Valley Baptist Hospital at different
13 times on different proposals, right?

14 A. Yes, sir.

08:58 15 Q. By Smith-Reagan?

16 A. Yes, sir.

17 Q. And you were normally one of the people who speaks, are you
18 not?

19 A. Yes, sir.

08:58 20 Q. What would your part be?

21 A. Well, I would make the introductory remarks; and I would --
22 I would get up and say, you know, "On behalf of Smith-Reagan,
23 Mr. Springfield, thanks for having us. Board members" -- maybe
24 say something nice about the folks that I worked with at the
08:58 25 hospital; and then I would turn the floor over to Mr. Smith,

Colvin Direct of Carter

08:58

1 who would make the presentations.

08:58

2 Q. Okay. Was it always Mr. Smith or was it sometimes
3 Mr. Reagan or --

08:58

4 A. No, not Mr. Reagan at the hospital. It was -- that was --
5 it was Mr. Smith's -- that was his baby.

08:59

6 Q. And what about Mr. Swetnam; was he normally one of the
7 people who was actually talking about the technical aspects of
8 the policy?

9 A. Yes, sir. Mr. Smith would give the general overview and go
10 through the Power Point. And if any questions arose, Mr. Smith
11 would turn to Mike for clarification.

12 Q. Okay. Let me direct your attention -- I put up on the
13 screen Government Exhibit 11-8. Can you identify that from
14 what I've got up there?

15 A. Yes, sir. That's an e-mail from me to Mr. Smith,
16 Mr. Swetnam and Mr. Reagan.

17 Q. And this is the "fancy themselves businessmen" e-mail?

18 A. Yes, sir.

19 Q. Okay. What's the date on there?

20 A. May the 9th of '07.

21 Q. Read to the jury that first paragraph.

22 A. "As we capitalize on the most recent opportunity to be of
23 service to VBHS, let's concentrate on a solid, extremely
24 succinct dissemination of information to their highest levels."

25 Q. What are you saying and why are you saying it?

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08:59 1 A. I'm saying that we don't need a lot of small talk among a
2 lot of people. We need to get the right information to the
3 decision-makers at the hospital: Mr. Springfield, Mr. Eastham,
4 Mr. Vela, Mr. Cook.

09:00 5 Q. Okay. Now, the truth, the whole truth and nothing but the
6 truth, were Mr. Cook and Mr. Eastham or anybody else, were they
7 decision-makers?

8 A. No. Mr. Springfield made the call.

9 Q. Okay. So, is that who you're really talking about?

09:00 10 A. Well, yes, sir. But this -- yes, sir. This was going to
11 be a group meeting; but, yes, sir.

12 Q. And the second paragraph that -- beginning with "Mike."

13 A. I said, "Mike, we must focus on a layman's mentality as we
14 gather information regarding Marsh and make certain that our
09:00 15 presentation is easily understood. These folks fancy

16 themselves as businessmen. Manny is the only one who admits
17 any semblance of ignorance and is the only one who defers to
18 our knowledge. Don't tell them anything about TDI, taxes or
19 anything negative about Marsh at this first meeting. Trust me,

09:01 20 they all believe they got objective counseling from the big
21 broker. Any challenge will make them timid about letting us in
22 front of their finance committee, and we have to get there."

23 Q. Now, what are you talking about "focus on a layman's
24 mentality"? What are you trying to communicate?

25 A. Well, Mike was very technical and Jim was very --

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09:01

1 Q. Jim who?
2 A. Mr. Springfield was very reluctant to admit he didn't know
3 something. So, he would ask Mike a very technical question and
4 Mr. Swetnam would answer it in a technical manner and then
5 Mr. Springfield, later on, would yell at me, "He's talking over
6 my head, in my board room, trying to make me look bad."

7 And I'm telling Mike, "Just be calm. Talk in a
8 layman's mentality. Don't upset him."

9 And Mike had uncovered some issues with Marsh's
09:02 10 philosophical program that centered around the TDI, taxes and
11 other things. And I said, "Let's don't talk bad about Marsh,
12 because they like Marsh. Let's just wait until we get in front
13 of the finance committee and we can explain our own program."

14 Q. You were just trying to get an opportunity to make your own
09:02 15 presentation to the --

16 A. Yes, sir, absolutely.

17 Q. -- to the committee?

18 Now, why do you say "they fancy themselves
19 businessmen"?

20 And let me just ask you this. They're running a
21 multi, multi million-dollar operation, right?

22 A. Yes, sir.

23 Q. They just bought a hospital in Brownsville for millions and
24 millions of dollars, right?

25 A. Yes, sir.

Colvin Direct of Carter

09:02 1 Q. They are running this stuff?

2 A. Yes, sir.

3 Q. They are businessmen?

4 A. Yes, sir.

09:02 5 Q. They don't just fancy themselves businessmen, right?

6 A. A better word might have been they fancy themselves
7 insurance aficionados.

8 Q. Well, let me ask you this, then. Did you hear Mr. Beck on
9 the witness stand?

09:02 10 A. Yes, sir.

11 Q. Did you hear them talk about having their own in-house risk
12 manager?

13 A. Yes, sir.

14 Q. Is that a normal insured?

09:03 15 A. No, sir.

16 Q. Did you hear him talk about them having their own general
17 counsel?

18 A. Yes, sir.

19 Q. Manny Vela, in-house lawyer in charge of legal?

09:03 20 A. Yes, sir.

21 Q. Is that a normal insured?

22 A. No, sir.

23 Q. So, they're not just fancying themselves as sophisticated
24 businessmen; they are sophisticated businessmen?

09:03 25 A. Yes, sir.

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09:03 1 Q. So, do you feel like you were smarting off here a little
2 bit? Or were you trying to make some other point that's just
3 lost on me?

4 A. Well, it was three years ago; but I'm a little bit, I
09:03 5 think, acquiescing to Mike that he is very technical and, you
6 know -- but, yes, I'm being a smart aleck.

7 Q. Okay. Well, in other words, you're saying that Mike is the
8 expert on this --

9 A. Yes, sir.

09:03 10 Q. -- and to not talk over their heads?

11 A. Yes, sir.

12 Q. Okay. What about the next paragraph that begins "David"?
13 I guess, do you have instructions for everybody, as the lowest
14 man on the totem pole?

09:03 15 A. Yes, sir.

16 I did say, "David, we must focus on staying in
17 the here and now and avoid at all costs giving JGS a feeling of
18 condescension. He is keenly aware that he lacks technical
19 expertise but does not want that fact disclosed. We must
09:04 20 protect him at all costs. We learned some lessons from Randy
21 McLelland and must remember how insecure the king is on these
22 matters."

23 Q. All right. Now, tell -- I know the jury has heard this,
24 and I don't want to just go over every little thing that
09:04 25 they've had to listen to. But just remind the jury what the

Colvin Direct of Carter

09:04 1 situation was with Randy McLelland that you're referencing.

2 A. This is the story I told you about the welding goggles
3 yesterday; and I've told you that Mr. Springfield got highly
4 offended when Mr. Smith presented welding goggles and said,
5 "Watch out for the flash of Marsh." That's what I was
6 referring to.

7 Q. Now, do you think Randy McLelland was offended?

8 A. No, sir. I think he and Mr. Smith were very close friends.

9 Q. But you were just trying to keep another problem from
09:05 10 occurring. Is that right?

11 A. David spoke in metaphor all the time: the four horsemen,
12 commanding officers. He was a little odd.

13 Q. The next paragraph begins, "The best formula is the one
14 that has guided us the past three renewals,"" would you read
09:05 15 that?

16 A. Yes, sir.

17 "The best formula is the one that has guided the
18 past three renewals. Give me the info, let me explain it to
19 them. They trust me completely, as evidenced by their
20 encouragement of this process; and we will handle this program
21 unless we do something stupid."

22 Q. Okay. When you say, "Give me the info," are you talking
23 about the technical information on --

24 A. No, sir.

09:05 25 Q. What are you talking about?

Colvin Direct of Carter

09:05 1 A. I'm talking about the renewal -- the renewal numbers, "Give
2 me the information that you want them to have. Give me -- just
3 give me the information." They were basically renewing an
4 existing program.

09:06 5 Q. Okay. All right. And what about the next paragraph; would
6 you read that to the jury?

7 A. "If there is a message here that you need to heed, grab it
8 and hold onto it. I will not be able to bail you out if you
9 play into JGS stereotypes of our team."

09:06 10 Q. Let me stop you there and just ask you what you are talking
11 about.

12 A. Well --

13 Q. What are the stereotypes that you thought JGS -- and "JGS"
14 is Mr. Springfield, right?

09:06 15 A. Yes, sir.

16 He thought that Mike intentionally talked over
17 his head technically, and he thought that Mr. Smith was always
18 trying to sell him insurance instead of provide him solutions.

19 Q. Read the rest of that paragraph.

09:06 20 A. "Do not sell, justify, explain, teach or exert metaphors in
21 his direction in his board room. We will do just fine in the
22 first meeting by listening to what he wants to accomplish, with
23 no editorial or advisory comments, and then refining and making
24 suggestions that make it work."

09:07 25 Q. That's pretty good advice, don't you think? I mean, you

Colvin Direct of Carter

09:07 1 were just trying to give him some insight into Mr. Springfield
2 and --

3 A. Yes.

4 Q. -- what was working and what was not working. Is that fair
09:07 5 to say?

6 A. Yes, sir. I think further down in that e-mail there's even
7 something about that.

8 Q. Okay. Go ahead.

9 A. I can't see it.

09:07 10 Q. Oh, I'm sorry.

11 A. Oh, yes, sir.

12 "I know the above to be accurate because it came
13 from Jim himself today. Drop all egos at the door and help me
14 do what I do best."

09:07 15 Q. All right. Go ahead and read that last sentence.

16 A. "Relax. I can handle this one. BC."

17 Q. What are you saying?

18 A. I've given them the instructions that will allow them to
19 get in front of the finance committee, and I'm saying just
09:07 20 don't do anything crazy, don't whip out any, you know, props,
21 don't talk over anybody's head, don't put down Marsh and we'll
22 handle the account, we will handle the renewal.

23 Q. Okay. When you're saying, "I can handle this one," are you
24 talking about you handling Springfield -- what are you talking
09:08 25 about?

Colvin Direct of Carter

09:08 1 A. I'm just talking about -- I'm just saying, "Heed the
2 advice. You know, I'm giving you -- I'm giving you the key to
3 the account."

4 Q. Okay.

09:08 5 A. I'm not a -- I'm certainly not handling anything technical.

6 Q. Did you feel like -- what's -- the date on that e-mail is
7 May of 2007. Did you feel like at that point that the business
8 was moving no matter what? Or had that -- had that not
9 really -- that decision not really been made yet?

09:08 10 A. There were parts of the business I had been assured were
11 going to move as soon as it was feasible to do so, but I had
12 basically been advised that the plan was to renew the account
13 with Smith-Reagan for this year even though there was outside
14 competition.

09:09 15 Q. And what part of the account were you talking -- were you
16 pretty sure you could get if everybody did what they should do
17 as far as Mr. Springfield was concerned? What policies, you
18 know, what types of coverage were you --

19 A. Well, the property and the windstorm and the umbrella and
09:09 20 the auto and -- the entire account.

21 Q. Okay. All right. Now, let me show you what has been
22 marked as Government's Exhibit 11-9. And can you see that?

23 A. Yes, sir. I think I've memorized this one.

24 Q. I think I've memorized all of them.

09:10 25 Who is that from?

Colvin Direct of Carter

09:10 1 A. It's from -- it's actually from Mike Swetnam, and this copy
2 has been moved around from David Smith to Joe Reagan.

3 Q. Okay. Now, this e-mail, were you copied on it?

4 A. No, sir. It's addressed to my two partners, which would be
09:10 5 David and Joe.

6 Q. What has happened here?

7 A. I've been fired from the account.

8 Q. So, is it fair to say that on May 25th -- or May --

9 A. Or the 6th.

09:10 10 Q. -- May 9th you were saying, "Relax and I'll handle it"?

11 A. Yes, sir.

12 Q. And less than a month later, you were fired?

13 A. Yes, sir.

14 Q. So, it didn't work out quite like you thought?

09:11 15 A. No, sir, it did not.

16 Q. Okay. Tell the jury how you went from, "Relax, I can
17 handle this" to fired off the account?

18 THE COURT: Now, did you get fired by virtue of this
19 memorandum?

09:11 20 MR. COLVIN: No, your Honor. This memorandum -- this
21 e-mail was sent to correct -- let everybody know --

22 MR. McCONNELL: Objection. Your Honor, I object to
23 Mr. Colvin testifying.

24 MR. COLVIN: I'm sorry.

09:11 25 THE WITNESS: I can -- this e-mail was actually sent

Colvin Direct of Carter

09:11 1 by Mr. Swetnam to his partners in response -- I had been asked
2 a question by a board member. It's a small community.

3 And you've heard me mention Mr. Elliff.
4 Mr. Elliff is a dear friend and a neighbor. And he had asked
5 me a question about the viability of this VAC program that the
6 hospital was looking at. And it was -- you know, he was in my
7 living room and I answered his questions and I told him some of
8 the concerns that I had heard at Smith-Reagan.

9 Well, when he left the house, he was concerned
10 and he was troubled and spoke with Mr. Springfield. And
11 Mr. Springfield, probably justifiably so, was livid with me
12 for, in his opinion, going behind his back and talking to a
13 board member. And he saw it as self serving. It actually
14 wasn't, but that's neither here nor there.

09:12 15 He fired me. He called David Smith and Joe
16 Reagan.

17 BY MR. COLVIN:

18 Q. What specifically did you say you had heard from the
19 principals at Smith-Reagan about this VAC captive?

09:12 20 A. Well, Mike had been doing some work with Mr. Springfield to
21 give him some information and so had Marsh. And Marsh had
22 promised Mr. Springfield, "We're going to have a company up and
23 running for you by September."

24 And Mike had said, "You know, there's just no
09:13 25 way. It just can't get done."

Colvin Direct of Carter

09:13 1 And Mr. Springfield was upset with Mike; and he
2 said, "You know, you're just a naysayer. You're just trying to
3 keep the business for yourself."

09:13 4 And Mr. Springfield had wanted to write business
5 in the Valley, that included workers comp, some expensive home
6 owners policies, he wanted to write some medical malpractice
7 and he wanted to insure the hospital in a company that the
8 hospital owned. And apparently there's some laws -- or there's
9 some regulation in Texas that only so-much of your business in
09:13 10 a company you own can be your own business. And that hospital
11 was so big that they would have had to write three times as
12 much outside business just to make it legal. And there was no
13 way to do it.

14 And that's about the conversation I had with
09:14 15 Mr. Elliff, that, "This is what I heard, and you guys need to
16 look into this." And Mr. Springfield was very upset.

17 Q. Did Mr. Springfield think you were going around his back
18 and talking to his board members to kill a project he believed
19 in?

09:14 20 A. Yes, sir.

21 Q. And did he think that you had had a motive for that in
22 trying to get the business some other way to Smith-Reagan?

23 A. Yes, sir.

24 Q. And did it damage your personal relationship with him for a
09:14 25 time?

Colvin Direct of Carter

09:14

1 A. For a period of time, yes, sir.

2 Q. All right. Now, back to this e-mail that's marked as
3 Government Exhibit 11-9, read this first paragraph to us if you
4 would.

09:14 5 A. "My two partners, lessons learned are sometimes painful;
6 but the long and short of it go this way. If a board member of
7 any corporation asks us a question, we must answer it
8 truthfully and then promptly advise the CEO of that corporation
9 of the board member contact and the topic of discussion with
09:14 10 that board member."

11 Q. Okay. The second paragraph -- or Number 2?

12 A. "If a corporate officer asks us a question, we should
13 answer it truthfully and then keep silent unless we are asked
14 to share the information with someone else by the corporate
09:15 15 officer."

16 Q. Just go ahead and read the rest of -- through 5 for us.

17 A. Yes, sir.

18 "Number 3, When we have differing opinions, we
19 need to come to a resolution about our opinions and respond
20 with the consensus, even if the consensus opinion is different
21 from our own personal opinion.

22 "Number 4, We must keep the insurance business of
23 any client confidential from insiders and outsiders of that
24 particular client.

09:15 25 "Number 5, Personal relationships must be kept

Colvin Direct of Carter

09:15 1 apart from business relationships. Easy to say but hard to
2 do."

3 Q. The things that he's talking about, do you really feel
4 like -- well, do you really feel like you -- I mean, were you
09:16 5 pretty much complying with the things that he's instructing or
6 reminding his other partners to do?

7 A. Well, in that one instance, I would say no; but for the
8 most part, yes, sir.

9 Q. Okay. And then, after that, he says what?

09:16 10 A. Can you slide it up?

11 Q. I'm sorry.

12 A. It ends at --

13 Q. I apologize.

14 A. It says, "I am surprised that we weren't fired today. By
09:16 15 all reasonable standards, we should have been fired on the
16 spot."

17 Q. And he's talking about you having, as far as
18 Mr. Springfield was concerned, gone around him and talking to a
19 board member?

09:16 20 A. Yes, sir.

21 Q. And but is it fair to say, is it the truth that what you
22 really did was just answer a board member's question?

23 A. Yes, sir.

24 Q. And was it a specific question?

09:16 25 A. It was.

Colvin Direct of Carter

09:16 1 Q. And was it about what your principal's thought at
2 Smith-Reagan about the VAC proposal?

3 A. Yes, sir.

4 Q. And this board member was also a friend of yours, right?

09:17 5 A. A dear friend of mine and Mr. Springfield's.

6 Q. And a neighbor?

7 A. Yes, sir.

8 Q. All right. Now, the June '07-'08 windstorm coverage that
9 was placed --

09:17 10 A. Yes, sir.

11 Q. -- do you recall that?

12 A. Yes, sir.

13 Q. Who placed that? As far as you knew, who at Smith-Reagan
14 placed that?

09:17 15 A. Be Mr. Swetnam.

16 Q. Was anybody else involved?

17 A. Not that I know of.

18 Q. Did you do any work on the placement of that coverage?

19 A. No, sir.

09:17 20 Q. On this coverage did you ever have any reason to believe
21 there was any issue about the coverage?

22 A. No, sir.

23 Q. Do you remember what you saw, as far as documentation, on
24 the windstorm coverage for '07-'08?

09:18 25 A. I mean, nothing jumps to -- I don't recall seeing anything

Colvin Direct of Carter

09:18

1 on it.

2 Q. And I can't remember right now, but at some point you do
3 deliver a binder of different coverages and different policies
4 to the hospital?

09:18 5 A. Yes, sir, to Mr. Cook.

6 Q. Would that have been on the '07-'08 policies or on the
7 '06-'07?

8 A. No, sir. That was '06. I wasn't -- I didn't go to the
9 hospital during that period of time in '07, at
09:18 10 Mr. Springfield's request.

11 Q. So, you were not even at the agency when this policy was
12 quoted, bound, issued or the cover notes written?

13 A. Well, I still worked at Smith-Reagan; but, no, I was not at
14 the hospital at any point during --

09:18 15 Q. Or working on any hospital business?

16 A. No. No, sir, no hospital business.

17 Q. Okay. You were paid a commission?

18 A. Yes, sir.

19 Q. A percentage of a commission, right?

09:19 20 A. Yes, sir.

21 Q. Had you at this point gotten any kind of accounting from
22 Smith-Reagan about what money came in and what money --

23 A. No, sir.

24 Q. -- was being paid?

09:19 25 A. No, sir.

Colvin Direct of Carter

09:19 1 Q. Okay. And was this still a source of friction between you
2 and them?

3 A. Yes. Yes, sir.

4 Q. Was the friction between you and them aggravated by virtue
5 of you having damaged your relationship with Mr. Springfield?

6 A. Yes, sir. The perception was, you know, "You were in
7 charge of the social stuff, and now you can't do that. So, you
8 know, really what good are you to us on this account?"

9 Q. And how much were you paid on that policy? I mean, your
09:19 10 part -- your commission on that policy?

11 A. On the wind?

12 Q. On the wind. Do you remember?

13 A. I'm going from remembering through the trial. I think
14 two -- 274, two -- something like that.

09:20 15 Q. Okay.

16 A. \$274,000.

17 Q. Okay. Now, let me show you what has been marked as
18 Government's Exhibit 11-10. Can you see that?

19 A. Yes, sir.

09:20 20 Q. Who is that from?

21 A. It's from me.

22 Q. And what's the date on that?

23 A. July the 28th of '07.

24 Q. And who are you writing to?

09:20 25 A. Mr. Reagan, Mr. Smith and Mr. Swetnam.

Colvin Direct of Carter

09:20 1 Q. Read that first sentence, and then I'm going to ask you
2 about it.

3 A. "I am leaving Sunday with Mr. Springfield, Dr. McKenna and
4 our kids for California. I will be out next week. It won't be
09:20 5 relaxing."

6 Q. Where were you going?

7 A. We went to the Monterey Peninsula. We went out to the West
8 Coast and played golf.

9 Q. What had caused your relationship with Springfield to be
09:21 10 good enough -- he was going on this trip?

11 A. Yes, sir.

12 Q. Were you invited to go?

13 A. Yes, sir.

14 Q. How did that happen?

09:21 15 A. Well, I answer that in the third paragraph. But he -- we
16 had made up, for lack of some technical jargon. We had
17 reconciled.

18 Q. Okay. Read that next paragraph, beginning with "David
19 mentioned."

09:21 20 A. "David mentioned that I should handle all the social stuff
21 for the agency while I am gone. My inference is that he will
22 continue to handle the actual important work of the account. I
23 appreciate that and will do my part to contribute.

24 "The social stuff is the reason we kept the
09:21 25 account three years ago, have it today, and the reason

Colvin Direct of Carter

09:22 1 Mr. Springfield didn't throw us out two months ago. The social
2 stuff is the reason it will move someday.

3 "No one questions our ability to buy insurance
4 for the facility. Hey, we are in a social business; and I am
09:22 5 Jim Springfield's best friend. This fact could matter later."

6 Q. Were you upset again?

7 A. Yes, sir.

8 Q. Were you perhaps overreacting again?

9 A. Yes, sir.

09:22 10 Q. The -- did you feel like the social stuff was work?

11 A. It was with Mr. Springfield, yes, sir.

12 Q. Okay. You did enjoy the relationship?

13 A. I did.

14 Q. He truly was a friend?

09:22 15 A. Yes, sir.

16 Q. But he can be work?

17 A. It's -- if you've ever done corporate entertaining, it's a
18 full-time -- you've got to watch what you say early in the
19 morning, late at night, on the golf course. It can all come
09:23 20 back around.

21 Q. In fact, if you don't watch what you say, you can get fired
22 off the account?

23 A. I've heard that it's happened.

24 Q. Within 24 hours?

09:23 25 A. Yes, sir.

Colvin Direct of Carter

09:23

09:23

09:23

09:24

09:24

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09:25

1 Q. Read that next paragraph.

2 A. "When you have volatile personalities like Jim's and mine,
3 flare-ups occur, people get yelled at and feelings get hurt. I
4 have taken volumes of grief over the past three years and
5 protected you from it all. The welding goggles jump to mind,
6 followed closely by the accidental implications they sought to
7 commit a crime over their trusts. I get paid handsomely to
8 take it. Right? So, do you. Welcome to my world."

9 Q. What are you talking about there?

10 We know what you're talking about on the goggles,
11 and you don't need to repeat it. What are you talking about on
12 the "crime on the trust"? Is that the excess loss program we
13 heard about?

14 A. They had closed down a trust and had planned to -- it was
15 near the end of the calendar -- or the fiscal year for them,
16 and they wanted to close this trust down and take out about --
17 I think it was a little over \$2 million. And they were just
18 going to roll it into their bottom line as if it was.

19 Income. And Mr. Smith drew a couple of T
20 accounts and said, "You know, it's really not income." And --
21 and they were offended.

22 You know, they said, "You sell insurance. We'll
23 do our own accounting."

24 Q. And, then, the next paragraph is, "My relationship with
25 JGS." Would you read that paragraph?

Colvin Direct of Carter

09:24 1 A. "My relationship with JGS" -- Mr. Springfield -- "is fine
2 and back to normal. Yet I am still catching little
3 irresponsible stinging remarks from my own team. The time
4 spent obsessing on this account needs to be directed towards
09:24 5 streamlining production to replace the income loss when it
6 moves. The financial reckoning cometh."

7 Q. Now, in July of 2007, is there any doubt that this account
8 is going to move?

9 A. Not to me, no, sir.

09:25 10 Q. And do you have an opinion at that time about what you
11 should be doing as far as pricing the account -- or how you
12 treat the account as far as pricing goes?

13 A. From my perspective, my attitude was, "This is -- this is
14 the last time you're going to renew it. It doesn't make any
09:25 15 sense to try to sell it super cheap to keep the business,
16 because I know you're not going to keep it." And they didn't.

17 Q. Okay. So, were you trying to keep it within the market --
18 the price within the market?

19 A. Oh, yes, sir.

09:25 20 Q. But you weren't trying to save any money --

21 A. No, sir.

22 Q. -- off of this account?

23 A. No, sir.

24 Q. That's a pretty mercenary attitude about it, isn't it?

09:26 25 A. Smith-Reagan was not a not-for-profit organization.

Colvin Direct of Carter

09:26 1 Q. All right. Go down this last paragraph -- the paragraph
2 that begins, "I am doing my best to let things roll off my
3 back."

4 Have I even got that up yet?

09:26 5 A. "I am doing my best to let things roll off my back. Mike
6 can clarify anxieties if they matter to any of you. I am just
7 an employee and will contribute as you see fit. However, you
8 only need -- you need only to look back three years. Remember
9 Bob Shepard breathing down your necks and all of your fears of
09:26 10 that and acknowledge I made him irrelevant with all that social
11 stuff. I know they're just words, but they matter. Fix it,
12 drive on, and avoid the ego traps laying everywhere. See, I
13 listen and learn."

14 Q. Okay. Who is Bob Shepard?

09:27 15 A. Mr. Shepard is a competing agent in the Valley, that was
16 also a friend of Mr. Springfield's.

17 Q. And Shepard Walton King would have been a major competitor
18 of Smith-Reagan?

19 A. Yes, sir.

09:27 20 Q. I mean, a serious competitor?

21 A. They're a larger agency, yes, sir.

22 Q. And they're not the only one in the Valley, right?

23 A. No, sir.

24 Q. There were several others?

09:27 25 A. Yes, sir.

Colvin Direct of Carter

09:27 1 Q. But just based on this e-mail, you're still having issues
2 with the principals of Smith-Reagan?

3 A. Yes, sir.

4 Q. And you still got your feelings hurt about not being able
09:27 5 to get an accounting and not being told what's going on with
6 the --

7 A. Yes, sir.

8 Q. Okay. Let me show you what has been marked as Government
9 Exhibit 11-11. Can you see that?

09:28 10 A. Yes, sir.

11 Q. Who is that from?

12 A. It's from me to David Smith.

13 Q. Okay. And what's the date?

14 A. August the 28th of '07.

09:28 15 Q. This was an e-mail that the government talked about,
16 correct?

17 A. Yes, sir.

18 Q. Okay. Read that first paragraph.

19 A. "Be that as it may, we did a good job pricing it last year
09:28 20 at a level I suspect was higher than you would have placed it.
21 The concept of pricing it down has no logic since it will not
22 lead to any consideration in the future. As soon as VAC is
23 capable, it will write the excess if for no other reason than
24 to justify its existence."

09:28 25 Q. Okay. Go ahead and read that next sentence.

Colvin Direct of Carter

09:28 1 A. "Trust me on matters of cash and be more profitable. You
2 can always give it back via Children's Gala, etcetera. I am
3 really serious here."

4 Q. All right. Now, what are you saying?

09:29 5 A. Well, the year before, I had input from Mr. Vela that --
6 kind of through conversation and through time together, that
7 allowed me to -- I forwarded to Mr. Smith where the market was,
8 based on their consultant. And it allowed Smith-Reagan to make
9 more income and still be cheaper than the competition.

09:29 10 He, Mr. Smith, was kind of guessing where the
11 market was and Mike had some indications but, at the end of the
12 day, Valley Baptist basically priced the product for us.
13 Mr. Vela said, "You need to get it done cheaper than X" and I
14 told that to Mr. Smith and then Mr. Smith ended up choosing a
09:29 15 higher income than he would have without that information.

16 Q. You're responding to something from Mr. Smith. Mr. Smith
17 is obviously thinking about trying to price it down.

18 A. Yes. He had asked me, actually. He said, "Do you think we
19 would get any long-term consideration if we just drop the
09:30 20 bottom out of it and just didn't make much profit at all this
21 year?"

22 And I told him what I knew to be true, which
23 ended up occurring. I said, "You're going to lose this
24 business after this year."

09:30 25 THE COURT: I'm sorry. Tell me why you were so

Colvin Direct of Carter

09:30

1 confident of that.

2 THE WITNESS: Well, by this time, your Honor,
3 Mr. Springfield was encouraging me to interview with and try to
4 go to work for Alliant --

09:30

5 THE COURT: Okay.

6 THE WITNESS: -- who was going to take the business.

7 BY MR. COLVIN:

8 Q. And he encouraged you pretty strongly to go to work for
9 Alliant, didn't he?

09:30

10 A. Yes.

11 Q. Do you have any regrets today you didn't do that?

12 A. Ultimately, no.

13 Q. Can you see the bottom part of that page, where the e-mail
14 is to you?

09:30

15 A. Yes, sir. If you'll raise up where it starts --

16 Q. I'm just asking you to see that first few lines.

17 A. Yes, sir.

18 Q. Do you see it says, "Brent, I will talk to Mike"?

19 A. Oh, yes, sir.

09:31

20 Q. "I suspect your mortgage is about paid off"?

21 A. "But I understand your concept and thinking," yes, sir.

22 Q. What -- why is he saying that?

23 A. Well, I was -- I was being flip with him in an earlier
24 e-mail. I don't know where it is, but I had sent Mr. Smith an
25 e-mail and it was -- it was in conversation regarding this

Colvin Direct of Carter

09:31 1 "should we drop the bottom out of the pricing."

2 And he -- I had told Mr. Smith -- I said, "Don't
3 be thinking about your legacy over there." I said, "Be
4 thinking about my mortgage." And I was the guy in the agency
5 with the young kids and the house that wasn't paid for. So, I
6 was just being a smart aleck. But it wasn't mean spirited. We
7 were just talking.

8 Q. Okay. Now, I just -- let me go back up to that first -- I
9 guess it's the first paragraph. In that first paragraph, you
09:32 10 say, "Be that as it may, we did a good job pricing it last year
11 at a level" -- do you see that sentence?

12 A. Yes, sir.

13 Q. What do you mean by that, when you say you did a good job
14 pricing it last year?

09:32 15 A. Well, I was referring to the fact that the information I
16 received from Valley Baptist allowed Smith-Reagan to make more
17 money than they would have if they would have been guessing at
18 what the market was.

19 Q. Okay.

20 A. I received market information from Valley Baptist.

21 Q. Did -- were you told by them where -- what the source was
22 of this other quote that you had to beat?

23 A. On several occasions.

24 Q. Okay. And what were you -- who were you told they were
09:33 25 getting this information from?

Colvin Direct of Carter

09:33 1 A. In this particular year, it was definitely Alliant.

2 Q. Okay. Was Marsh out of the picture at this stage?

3 A. I'm not positive because some of that happened while I was

4 off the account. I wasn't in tune with what was going on.

09:33 5 Q. All right. I'm going to show you what has been marked as

6 Government Exhibit 11-11A. Can you see that?

7 A. Yes, sir.

8 Q. Who is that e-mail from?

9 A. It's from me.

09:33 10 Q. And what's the date on it?

11 A. August the 28th, '07.

12 Q. Okay. And what's -- read this first -- these first two

13 sentences to the jury -- or to all of us.

14 A. "Just got back from a meeting with Ward Cook and David

09:34 15 Smith. Sounds like VBHS will be a player at 30 excess 10."

16 Q. Okay. And the next sentence?

17 A. "Ward also requested a look at 30 excess 15. The big guy

18 will probably sleep better excess of 10. Twenty is too high."

19 Q. What are you talking about there?

09:34 20 A. I'm quoting Ward Cook as saying, "The big guy" -- that

21 would be Jim Springfield -- "would probably like to just have a

22 \$10 million deductible instead of a 15 million or a 20 million

23 dollar deductible."

24 Q. Okay. Can you see where -- the paragraph that starts,

09:34 25 "Here is the deal"?

Colvin Direct of Carter

09:34 1 A. Yes, sir.

2 Q. Read that paragraph to us.

3 A. "Here is the deal. By giving them credit for good losses,
4 HB4 and renewal credit, we can offset the natural increase
09:35 5 caused by a third year claims made. That means 30 excess 20
6 should come in around last year's premium. Therefore, it
7 should cost about 2.3 million."

8 Q. Now, what are you talking about -- I think it may be self
9 explanatory, but just briefly tell us what you're talking about
09:35 10 by "giving them credit for good losses."

11 A. Well, I mean, I really don't know. This is an assemblage
12 of information. I mean, I kind of know what this is talking
13 about. This is talking about that they had good losses and --
14 "HB4" is House Bill 4, which kind of modified medical
09:35 15 malpractice legality, I guess.

16 What -- if you look at it the way it is in form,
17 the -- one, two, three -- the first four sentences are my notes
18 from the meeting with Ward and David Smith.

19 Q. All right. So, it's natural that Ward Cook would have told
09:36 20 you what their loss record was for the last year, right?

21 A. Yes, sir. I believe Mike handled the trust.

22 Q. Because he's the risk manager?

23 A. Yes.

24 Q. And he's very involved in all the claims?

09:36 25 A. Yes, sir.

Colvin Direct of Carter

09:36 1 Q. And, so, really, you're just passing on information to the
2 agency?

3 A. Yes, sir. The second part is from Mike.

4 Q. Okay. And beginning with, "I spoke with Manny," could you
5 read that?

6 A. "I spoke with Manny after the meeting and agreed -- and he
7 agreed that the rationale is good. Let us see how much is in
8 the trust, and let's talk again tomorrow. He understands that
9 the additional premium is simply the cost of funds for not
09:36 10 funding the trust. He further understood and appreciated that
11 the trust amount did not affect our quote. For example,
12 whether he's got eight and a half or nine in there, we attach
13 at 10."

14 Q. Okay. And read the paragraph that begins, "In summary."

09:37 15 A. "In summary, this business is leaving as soon as they can
16 move it. I suggest all commissions and fees be fully earned
17 and we plan on losing it next renewal. That does two things:
18 allows us to plan for the future and removes any guilt about
19 this year's income."

09:37 20 Q. What -- so, can you just sort of summarize for us --
21 because I don't want to go through a lot of detail on this.
22 But your mind-set at this time is what regarding pricing this
23 policy?

24 A. That is the last renewal. You know, there's -- you might
09:37 25 as well sell it at retail.

Colvin Direct of Carter

09:37 1 Q. Okay. And the sentence -- the next sentence that follows,
2 "Don't focus on legacy issues. Focus on my mortgage," is
3 that --

4 A. Yes, sir. That's the one I referred to earlier. I'm
09:38 5 encouraging Mr. Smith to maximize the agency's income.

6 Q. Did he think if he tried to really deeply discount the
7 policy -- the coverage for the next year that there was some
8 chance you might keep it, the business?

9 A. Initially. But he continued to ask me to follow and make
09:38 10 certain that I was correct. And eventually I told him that I
11 was correct.

12 Q. Okay. Let me get another exhibit here.

13 Mr. Carter, let me show you what has been marked
14 as Government Exhibit 8. And can you see that well enough?

09:39 15 A. Yes, sir.

16 Q. What is that?

17 A. That's the '07-'08 Zurich umbrella policy dec page.

18 Q. And if I -- can you see the premium on there?

19 A. Yes, sir.

09:39 20 Q. Is this the one that you would have seen?

21 A. This is the final one that I would have seen, yes, sir.

22 Q. Okay. And the original one from Zurich, did you ever see
23 that?

24 A. No, sir.

09:39 25 Q. Did you know it had been changed?

Colvin Direct of Carter

09:39 1 A. No, sir.

2 Q. I want to show you what has been marked as Government
3 Exhibit 8A. Do you see the premium on there?

4 A. Yes, sir.

09:40 5 Q. The premiums are significantly different, right?

6 A. Yes, sir.

7 Q. Now, you knew about the difference in the -- did you
8 believe that there was a 10 percent in commission embedded in
9 the Zurich premium?

09:40 10 A. No, sir.

11 Q. Did you know about the -- I'm going to call it "excess
12 commission" for lack of a better way to put it. That may not
13 be the correct term. But you did know what the commission was?

14 A. Yes, sir, I knew commission was added to the policy.

09:40 15 Q. Who was that determined by, what the amount of the
16 commission was going to be?

17 A. That was always determined by Mr. Smith.

18 Q. Okay. And you knew it was about a million dollars?

19 A. Yes, sir.

09:40 20 Q. But did you ever see anything from Zurich that had their
21 premium number on it before the commission -- the commission
22 was added?

23 A. No, sir.

24 Q. Did you have any reason to believe any of their
09:41 25 documentation was changed?

Colvin Direct of Carter

09:41 1 A. No, sir.

2 Q. Did you see any of these documents that were -- that
3 they're saying were modified, their original Zurich documents;
4 did you see any of those before the lawsuit?

09:41 5 A. No, sir.

6 Q. You received a part of this commission?

7 A. Yes, sir.

8 Q. Do you remember how much?

9 A. Not exactly. My guess would be 250,000; but I don't
09:41 10 remember the exact.

11 Q. Okay. Let me show you what has been marked Government
12 Exhibit 8E. Do you see that?

13 A. Yes, sir.

14 Q. Is that the -- is that the check that was made out to you
09:41 15 for that commission?

16 Don't let me confuse you on the exhibit.

17 A. No. That's fine.

18 I believe that that's the total commission on the
19 entire -- I don't think that's just on the windstorm.

09:42 20 Q. Would it have included your part of the commission -- well,
21 this is the Zurich policy, not the windstorm --

22 A. Oh.

23 Q. -- that we're talking about.

24 A. I mean, again, that's why I was always trying to figure out
09:42 25 what was going on. I can't tell you exactly what policy this

Colvin Direct of Carter

09:42 1 check would have been attributed to.

2 Q. This is -- you were paid this money?

3 A. Yes.

4 Q. And you did disclose this money on your taxes?

09:42 5 A. Yes, sir.

6 Q. Okay. All right. Back to the e-mails.

7 And we're about done.

8 I'm going to put up what's been marked as

9 Government's Exhibit 11-13 and ask you if you can identify

09:43 10 that.

11 A. Yes, sir.

12 Q. What -- who is that from?

13 A. It's from me.

14 Q. And who is that to?

09:43 15 A. To David Smith.

16 Q. Now, you heard the testimony in this courtroom about there

17 being e-mails, in the government documents, where you are

18 evidently responding to you?

19 A. Yes, sir.

09:43 20 Q. Is that, in fact, the case, that there were a lot of

21 e-mails in these documents that have been clearly redacted,

22 from your own personal knowledge?

23 A. Absolutely.

24 Q. Is this a response to an e-mail from someone else?

09:43 25 A. Yes, sir.

Colvin Direct of Carter

09:43 1 Q. Do you have the e-mail -- were we able to find the e-mail
2 you're responding to?

3 A. No, sir.

4 Q. Do you remember what the e-mail said?

09:43 5 A. Yes, sir.

6 Q. What did it say?

7 A. Mike and David were not talking by this point. This is in
8 January of '08. And David had sent me an e-mail, basically
9 whining that Mike wouldn't return his calls, Mike wouldn't
09:44 10 agree to a meeting with him, Mike was being childish and,
11 "Brent, I need Mike to work on the renewal for '08."

12 His last line in the e-mail before this one said,
13 "At the end of the day, I just want to do whatever I can to
14 help the hospital."

09:44 15 And I replied, "Don't give me any of that good
16 old boy rhetoric about just trying to help. You're culpable in
17 this one as well," meaning he's culpable in the fact Mike won't
18 even take his calls, they weren't even talking.

19 "You're just lucky I'm as greedy as you." I'm
09:44 20 saying, "You know what, David? I'll get with Mike, and I'll
21 try to get Mike to work with you because I would like to renew
22 the account, too." It was as simple as that.

23 Q. So, when you're talking about "culpability," you're not
24 even talking anything about the account?

09:45 25 A. No.

Colvin Direct of Carter

09:45 1 Q. Or your performance?

2 A. I'm not calling Mr. Smith a criminal, no, sir.

3 Q. Or yourself?

4 A. Certainly not.

09:45 5 Q. It's about his relationship with Mr. Swetnam?

6 A. Absolutely.

7 Q. Do you have any idea who would have redacted all these
8 e-mails the government has drawn their inference from?

9 MR. McCONNELL: Objection to speculation.

09:45 10 MR. COLVIN: I'll withdraw it.

11 THE COURT: Okay.

12 BY MR. COLVIN:

13 Q. Do you have any idea who might have redacted those e-mails?

14 MR. McCONNELL: Same objection, your Honor.

09:45 15 THE COURT: Well, I'm going to allow that.

16 Do you have any idea? If you don't, don't guess.

17 A. Well, can I state that it would -- it would probably be
18 somebody who had an interest in the other half of the e-mails
19 not getting in.

09:45 20 THE COURT: Okay.

21 MR. COLVIN: Okay.

22 BY MR. COLVIN:

23 Q. Let me show you what has been marked as Government Exhibit
24 11-18.

09:46 25 THE COURT: Anybody need a break?

Colvin Direct of Carter

09:46 1 Okay. Would all please rise for the jury?

2 (Recess was taken from 9:45 to 9:57 a.m.)

3 (Jury present)

4 THE COURT: Members of the jury, please be seated.

09:57 5 Okay. Why don't we resume your inquiry?

6 MR. COLVIN: Yes, your Honor.

7 BY MR. COLVIN:

8 Q. Mr. Carter, I've only got a couple of more documents I want
9 to show you. And the next one is Government Exhibit 11-18.

09:58 10 Can you see who that's from?

11 A. Well, there's several there. There's one from David with
12 nothing. Then there's me -- that one is from me.

13 Q. Okay. This is the one I think that really we need to look
14 at. What's the date on the portion of that e-mail that's from
09:58 15 you?

16 A. January 17th, '08.

17 Q. And it begins "David," and then skip -- I think skip the
18 first paragraph and read to us that second paragraph.

19 A. "I have never gotten over the disrespect I felt when I
09:58 20 asked for an accounting of the income and simply where it went.
21 I am truly sorry I am so weak minded that it still bugs me. It
22 led directly to my cutting a deal with Lone Star and leaving
23 your firm. Don't ever get between me and the money. It's how
24 I keep score in this game I play."

25 Q. All right. Now, what are you talking about there?

Colvin Direct of Carter

09:59 1 A. Well, by this time I'm already away from Lone Star [sic].
2 And I'm just talking about, "Don't lie to me about the money,
3 don't get between me and the accounting. I want to know -- I
4 want transparency."

09:59 5 Q. When you're talking about keeping score, are you
6 referencing again this disrespect issue within the agency and
7 who is doing the real work and who really should be getting the
8 credit?

9 A. Yes, sir.

09:59 10 Q. You know, is that what this is about or is it about
11 something else?

12 A. No. That's basically it. I mean, it was just an abyss
13 that he and I have not gotten past.

14 THE COURT: "He and I" meaning?

09:59 15 THE WITNESS: Mr. Smith and I.

16 BY MR. COLVIN:

17 Q. And the next paragraph?

18 A. "Also, I saw how quickly you correctly rationalized cutting
19 Joe out of the spread last year. Sure, he had it coming; but
20 Mike and I negotiated that spread and I sold it to them. You,
21 on the other hand, simply felt entitled to it, in my view.
22 That makes me want to watch every dime, because a rationalizing
23 mind is a dangerous mind."

24 Q. What are you talking about there? Reagan didn't get a
10:00 25 portion of --

Colvin Direct of Carter

10:00 1 A. One of the policies that renewed '07, I overheard a
2 conversation where Joe was not going to get an equal share. I
3 don't know how much he got, but it wasn't an equal share.
4 Q. Were you one of the decision-makers on that?
10:00 5 A. No, sir.
6 Q. And when you sold it to them, are you talking about your
7 relationship with Springfield?
8 A. Absolutely. I don't think there were any presentations on
9 that.
10:01 10 Q. Let me direct your attention to one more -- one more
11 e-mail -- or maybe it's a text. It's Government Exhibit 11-25.
12 I guess this is the text that you sent to Mr. Vela. Do you
13 recall that?
14 A. The -- yes, sir.
10:01 15 Q. And it's got Chris Hanslik's name there because Mr. Vela,
16 your friend, forwarded it over to the attorney for the
17 hospital, right?
18 A. Yes, sir, and Mr. Eastham and Mr. Lieberenz.
19 Q. What is the date on this text?
20 A. December the 8th of '08.
21 Q. What time of year is that?
22 A. It's around Christmastime.
23 Q. What were you feeling that caused you to send this text?
24 A. Just somewhat abandoned by somebody that I really had a
10:02 25 kindred heart with.

Colvin Direct of Carter

10 : 02 1 Q. Were you threatened with a criminal indictment?

2 A. I knew there was an investigation. I had very few details.

3 And Mr. Vela was, like, absent. We weren't communicating.

4 Q. Who had initiated stopping communicating?

10 : 02 5 A. Mr. Vela.

6 Q. Did you consider him one of your best friends?

7 A. Yes, sir, without a doubt.

8 Q. Before all this started?

9 A. Yes, sir.

10 Q. Now, as we sit here today, Mr. Carter, do you have a job?

11 A. No, sir.

12 Q. Do you have a 401(k) left?

13 A. No, sir.

14 Q. What happened to it?

10 : 02 15 A. It was seized by Mr. Boyden's office.

16 Q. Do you have anything except the house you live in?

17 A. Nothing but my family.

18 MR. COLVIN: I'll pass the witness.

19 THE COURT: Thank you very much.

10 : 03 20 All right. Who's got the inquiry? Or do you
21 have questions?

22 MR. CLARK: I will. I thought the government was
23 going to go first.

24 THE COURT: I thought so, too.

10 : 03 25 MR. CLARK: I just want to defer to the Court's --

McConnell Cross of Carter

10:03 1 THE COURT: I thought it would be the government's
2 turn next and you'll get your turn at bat after that.

3 MR. CLARK: Thank you, your Honor.

4 MR. McCONNELL: We do have some questions, your Honor.

10:03 5 THE COURT: Thought you might.

CROSS-EXAMINATION

7 BY MR. McCONNELL:

8 Q. Good morning, Mr. Carter.

9 A. Good morning, sir.

10 Q. Now, I'm going to start, if it's okay, with some of the
11 things you talked about yesterday and go kind of
12 chronologically like Mr. Chaney did. Is that all right?

13 A. Yes, sir. Sure.

14 Q. So, you joined Smith-Reagan in 2004, right?

15 A. Yes, sir.

16 Q. Okay. And at that time, you moved to Harlingen. Am I
17 right about that, that area?

18 A. Yes, sir.

19 Q. And where did you move from?

20 A. I moved from the -- Conroe, North Houston.

21 Q. And you had been working in the insurance industry for
22 quite a period of time?

23 A. Not at that time, no, sir.

24 Q. Oh, not before 2004? You didn't have any insurance
25 experience?

McConnell Cross of Carter

10:04 1 A. I did from '86 until about '95 off and on. But from
2 '95 forward, none.

10:04 3 Q. So, what's that? About nine years? '86 to '95?

4 A. It ended up being about seven and a half because there were
5 some gaps.

6 Q. Had you taken any sort of license to sell insurance? Is
7 there a licensing requirement?

8 A. Yes, sir. I took a test that allowed me to have what they
9 called a "solicitor's license" at that time.

10:05 10 Q. What is a "solicitor's license"?

11 A. It's what now is -- I think it's a little broader now, but
12 it's roughly what they call a "general agent's license" that
13 allows you to sell the types of insurance I told you I sold:
14 small commercial, home owners, auto.

10:05 15 Q. What kind of test is there to do that?

16 A. It's a computerized test. You go and you can take a class
17 and then you go and take a test on a computer and you get
18 fingerprinted now and they take your photo and send you a
19 license.

10:05 20 Q. How long is the test?

21 A. A hundred questions.

22 Q. What sort of subject matter does it cover?

23 A. They may -- you have to figure deductibles. It's just a
24 general knowledge of the insurance industry.

10:05 25 Q. You said you could take a class before you took the test.

McConnell Cross of Carter

10:05 1 What type of information is covered in the class?

2 A. Just general insurance information, I mean, you know,
3 what -- what's a deductible, what kind of policy -- you know,
4 what does a home owners cover, that kind of stuff.

10:06 5 Q. Do they tell you what a "premium" is?

6 A. In general, yes, sir.

7 Q. Do they tell you what "commissions" are?

8 A. Yes, sir.

9 Q. So, you moved to Harlingen in 2004; and you worked with
10 Smith-Reagan, right?

11 A. Yes, sir.

12 Q. And pretty quickly, I guess, after moving -- or was it
13 before moving that you became friends with Jim Springfield?

14 A. It was after moving.

10:06 15 Q. And how did you and Mr. Springfield come to be friends,
16 again?

17 A. We had -- well, we shared a love of golf and ended up in
18 the same golf group; and that's really where the friendship
19 developed.

10:07 20 Q. Did you socialize with one another?

21 A. Quite often.

22 Q. Did you have dinner at each other's house?

23 A. I think I've had dinner at Jim's house several times but
24 rarely at mine.

10:07 25 Q. You went on at least one trip together?

McConnell Cross of Carter

10:07 1 A. We went on several trips together.

10:07 2 Q. I'm going to show you what Mr. Colvin showed you as

3 Government's Exhibit 11. Do you remember talking about this

4 e-mail yesterday?

10:07 5 A. Yes, sir.

6 Q. And do you see here, in this third paragraph, where it

7 talks about Hurricane Katrina?

8 A. Yes, sir.

9 Q. And what are you saying about Hurricane Katrina?

10:08 10 A. That -- I'm quoting -- "we don't expect any significant

11 savings in '06 due to Katrina and increasing reinsurance cost

12 to carriers."

13 Q. Do you remember telling Mr. Colvin yesterday that after

14 you -- after you moved down to Harlingen that you became kind

10:08 15 of a point person with Mr. Springfield and the hospital?

16 A. Yes, sir.

17 Q. And when you read this e-mail and in your testimony, you

18 were kind of the one who would provide information to the

19 hospital in terms of what the market is like, you know, what

10:08 20 kind of prices they could expect and that sort of thing. Do

21 you remember testifying to that?

22 A. Yes, sir, in very general -- I mean, in very general ways,

23 yes, I would give them this information right here.

24 Q. Is it fair to say that you have some knowledge of the

10:08 25 insurance market down in Harlingen?

McConnell Cross of Carter

10:09 1 A. On smaller risks, yes, sir.

10:09 2 Q. Do you remember telling the jury yesterday about TWIA?

10:09 3 A. Yes, sir.

10:09 4 Q. What is "TWIA"?

10:09 5 A. It's the Texas Windstorm Insurance Association.

10:09 6 Q. And do you remember the context of you telling the jury

10:09 7 about TWIA yesterday?

10:09 8 A. Yes. We were talking about Mr. Buentello looking at a

10:09 9 spreadsheet, I believe.

10:09 10 Q. And, so, you're familiar with TWIA and windstorm coverage?

10:09 11 A. I'm very familiar with TWIA, yes, sir, and its role in

10:09 12 windstorm coverage, yes.

10:09 13 Q. And is it fair to say that you're also friends with

10:09 14 Mr. Vela?

10:09 15 A. Yes, sir.

10:09 16 Q. You talked about that, and what was the nature of your

10:09 17 friendship with Mr. Vela?

10:09 18 A. Mutual admiration.

10:09 19 Q. And you and Mr. Vela also had a relationship outside of

10:10 20 your business relationship, correct?

10:10 21 A. Yes, sir.

10:10 22 Q. Did you go golfing together?

10:10 23 A. Some, yes, sir.

10:10 24 Q. What about social outings?

10:10 25 A. Some, yes, sir.

McConnell Cross of Carter

10:10 1 Q. Did you run in the same social circles?

2 A. Some, yes, sir.

3 Q. Do you remember talking yesterday about how you and

4 Mr. Springfield had a friendship?

10:10 5 A. Yes, sir.

6 Q. And it was a friendship where you trusted one another. Do

7 you remember telling the jury that?

8 A. Yes, sir.

9 Q. What about you and Mr. Vela, did you trust one another?

10 A. I believe so, yes, sir. I know I did.

11 Q. You trusted him?

12 A. Yes, sir. I hope he trusted me.

13 Q. You trusted him?

14 A. Yes.

10:10 15 Q. And yesterday, at the beginning of your testimony, you

16 talked about how -- when you were talking about this e-mail,

17 about this meeting that occurred in December of 2005?

18 A. Yes, sir.

19 Q. Do you remember how you became the point person for kind of

20 the account, the hospital account?

21 A. I remember, yes, sir.

22 Q. And you felt a little bit embarrassed to be there, kind of,

23 being the new guy?

24 A. Yes, sir.

10:11 25 Q. Why did you feel embarrassed?

McConnell Cross of Carter

10:11 1 A. Because the transition needed to happen. It was at
2 Mr. Springfield's request; but it's a little embarrassing when
3 you're in a room and your bosses are being told, "I like you
4 guys; but from now on, Mr. Springfield wants to hear from
10:11 5 Brent."

6 Q. Sure. So, you were the new guy?

7 A. So, I was the new guy.

8 Q. But now you're the point person on the account?

9 A. Okay. Yes, sir.

10 10 Q. And all of these problems that the jury is hearing about
11 with these policies started after you became the point person
12 on the account. Is that fair?

13 A. Not any more fair than they started after Hurricanes
14 Katrina and Rita.

10:12 15 Q. So, you're saying the problems with --

16 THE COURT: Well, I think -- before we talk about
17 cause at all, was that the timing of it?

18 THE WITNESS: Oh, yes, the problem started around or
19 after the time -- or around the time that I became the point
20 person, yes, there were problems.

21 BY MR. McCONNELL:

22 Q. That was my question.

23 A. I'm sorry. There were problems.

24 Q. And if you don't understand my question, just tell me --

10:12 25 A. I apologize.

McConnell Cross of Carter

10:12 1 Q. -- you don't understand and I'll try to rephrase it.

10:12 2 A. Yes, sir.

10:12 3 Q. So, yesterday, the first real substantive area that you

10:12 4 talked about and the first area that I'll talk about is the

10:12 5 meeting down in Mexico and these first windstorm policies. Do

10:12 6 you remember talking about that yesterday?

10:13 7 A. Yes, sir.

10:13 8 Q. So, from what I understood yesterday, you got a call to go

10:13 9 to this meeting at some point before August 29th, 2006?

10:13 10 A. I believe it was on August 29th.

10:13 11 Q. On August 29th, 2006?

10:13 12 A. Yes, sir.

10:13 13 Q. And you were asked to go to dinner. Is that right?

10:13 14 A. Yes, sir.

10:13 15 Q. And you were asked to go in Mr. Smith's place?

10:13 16 A. Yes, sir.

10:13 17 Q. I guess Mr. Smith had planned on going to this dinner, but

10:13 18 you went instead?

10:13 19 A. Yes, sir.

10:13 20 Q. And you drove down with Mr. Vela, Mr. Cook and who was the

10:13 21 other one?

10:13 22 A. Lesley Freeberg.

10:13 23 Q. Lesley Freeberg. And she also works for the hospital?

10:13 24 A. Yes, sir.

10:13 25 Q. And, so, three hospital folks, you and Mr. Swetnam?

McConnell Cross of Carter

10:13

1 A. Yes.

2 Q. And you drove down to Mexico in Mr. Swetnam's truck?

3 A. Yes, sir.

4 Q. And you had dinner?

10:13 5 A. That's correct.

6 Q. Do you remember where you ate?

7 A. I remember it was a place that Mr. Cook knew of that was
8 kind of in a back area down in Nuevo Progresso.9 Q. So, at the point when you guys are going down to dinner,
10 you had been the point person on the Springfield -- or I'm
11 sorry -- you were the point person on the hospital's account
12 for roughly eight months, nine months?

13 A. That's -- yes, that's right.

14 Q. Is that fair?

10:14 15 A. I'm sorry. I was doing some -- yes, that's fair.

16 THE COURT: Why don't you move that microphone a
17 little nearer your mouth?

18 MR. McCONNELL: Sure.

19 THE COURT: Okay. Thank you.

10:14 20 BY MR. McCONNELL:

21 Q. Can you tell us about your relationship with Ward Cook? Is
22 he -- do you have the same relationship with him as you do with
23 Mr. Springfield and Mr. Vela?24 A. No, sir. It was a little more distant. I mean, I saw Ward
25 professionally.

McConnell Cross of Carter

10:14 1 Q. Are you golfing buddies?

2 A. No, sir.

3 Q. You ever had dinner at Ward Cook's house?

4 A. No, sir.

10:14 5 Q. Did you go out to dinner with Ward Cook on a regular basis?

6 A. No, sir.

7 Q. Have you ever gone to dinner in Mexico with Ward Cook?

8 A. Yes, sir.

9 Q. Other than the time August the 29th, 2006?

10:15 10 A. No. Just that time.

11 Q. And you testified yesterday that you didn't really know

12 what the meeting was about, other than it was a dinner?

13 A. Did I? I mean, I knew that Mike needed to go down to do

14 the transaction for the windstorm.

10:15 15 Q. Oh, so, you knew --

16 A. I didn't think it was just a social dinner.

17 Q. Okay.

18 A. I was asked to go to a business meeting.

19 Q. Okay. And did you ask Mr. Swetnam any questions about what

10:15 20 was going to happen at the dinner?

21 A. No, sir. Like I said, I got the call at the last minute to

22 go.

23 Q. Did you ask Mr. Smith why he couldn't go?

24 A. I testified yesterday that Mr. Smith told me he didn't feel

10:15 25 well and asked me to go in his place.

McConnell Cross of Carter

10:15 1 Q. Did you ask Mr. Swetnam why he needed you to go down there
2 with him?

3 A. I don't believe he needed me to go at all.

4 Q. But did you ask him?

10:15 5 A. Oh, no, sir. I'm sorry.

6 Q. Did you ask Mr. Vela about the meeting?

7 A. I may have actually called Mr. Vela to set the meeting up,
8 initially; but I -- no, I didn't ask Mr. Vela anything about
9 it.

10:16 10 Q. Well, if you would have called him and asked him to set the
11 meeting up, what would you tell him was the purpose of the
12 meeting?

13 A. That Mike would have said, you know, "I need to go down and
14 do the captive transaction."

10:16 15 Q. Were you aware that the captive transaction needed to occur
16 in Mexico?

17 A. Yes, sir.

18 Q. You were aware that there was a reason that Mr. Swetnam
19 believed that transaction could not occur in Texas?

10:16 20 A. Yes, sir.

21 Q. And what was your understanding of why that transaction,
22 that deal, couldn't occur in Texas?

23 A. Well, everything that had been testified to here, that
24 there was -- TDI didn't regulate that type of activity and
10:16 25 therefore it couldn't be transacted in either -- I don't know

McConnell Cross of Carter

10:16 1 if it was in the State of Texas or in the United States.

2 Either way, Mexico was the closest.

3 Q. Were you aware that Mr. Swetnam had been in communications
4 with anyone from the BVI?

10:17 5 A. Not at that time, no, sir.

6 Q. Do you remember the e-mail we looked at that talked about
7 Bermuda and the BVI?

8 A. Oh, yeah. Well, he was -- when he was getting quotes, I
9 mean, I knew that he was going to go get a quote for excess
10 wind from either Bermuda or the Caymans or somewhere.

11 Q. Were you aware how much the premium was going to be, the
12 general ballpark?

13 A. Not of that specific piece of -- that layer, no, sir.

14 Q. So, you go down to dinner in Mexico; you get to the
15 restaurant; and you testified yesterday that you didn't see
16 Mr. Swetnam and Mr. Cook exchange any documents.

17 A. That's correct, I didn't.

18 Q. But you're aware now that the document -- the documents,
19 plural, given to Mr. Swetnam at this meeting include -- given
20 from Mr. Swetnam to Mr. Cook at this meeting include this cover
21 note?

22 A. Yes, sir.

23 Q. Do you remember hearing Mr. Cook testify about this cover
24 note?

25 A. Yes, sir.

McConnell Cross of Carter

10:18 1 Q. And you're not saying that didn't happen; you just didn't
2 see it happen?

3 A. No, I -- I'm not saying it didn't happen.

4 Q. Were you at, like, a large table at the restaurant?

10:18 5 A. A little bit bigger than this. It was me, Mr. Swetnam,
6 Mr. Cook was at the end, Mr. Vela was across from Mr. Swetnam
7 and Lesley Freeberg sat right across from me.

8 Q. Do you remember it pretty clearly, the dinner?

9 A. I was there, yes, sir.

10:18 10 Q. When you rode down to Mexico with Mr. Swetnam, Mr. Vela,
11 Ms. Freeberg and Mr. Cook, where were folks situated in
12 Mr. Swetnam's truck?

13 A. Mike and I drove up from the agency, and they just got in
14 the back. We picked them up at the hospital.

10:19 15 Q. Did you see any documents exchanged in the car?

16 A. No, sir.

17 Q. And you didn't see Mr. Swetnam pass Mr. Cook these
18 documents during dinner?

19 A. Not that I -- no, sir, I didn't.

10:19 20 Q. Okay. I mean, did you see them leave and go to the
21 bathroom together?

22 A. No, sir.

23 Q. You didn't notice anything suspicious about Mr. Swetnam
24 giving Mr. Cook any documents at dinner?

10:19 25 A. No, sir.

McConnell Cross of Carter

10 : 19 1 THE COURT: I believe your testimony is you didn't see
2 it happen.

3 THE WITNESS: I mean, yes, sir. I think it's been
4 testified that Mr. Swetnam just gave the documents to Mr. Cook.
10 : 19 5 I didn't -- I mean, I knew at some point he was bound to do
6 something with some documents; but I didn't --

7 THE COURT: You didn't see it.

8 THE WITNESS: I just didn't see it.

9 THE COURT: All right. All right.

10 BY MR. McCONNELL:

11 Q. Did you ever ask Mr. Swetnam about who he ended up getting
12 coverage from?

13 A. No, sir.

14 Q. Because you knew that he was trying to set up these
10 : 20 15 captives, right?

16 A. Well, I thought originally he was trying to set up a
17 captive.

18 Q. Okay.

19 A. And, yes, I knew that.

20 Q. You knew he was trying to get some windstorm coverage for
21 the hospital?

22 A. Absolutely.

23 Q. And you knew at this meeting in Mexico that the reason you
24 were going down there is because Texas law precluded you from
10 : 20 25 doing this deal in Texas?

McConnell Cross of Carter

10:20

1 A. Yes, sir.

2 Q. So, you knew that was going to happen?

3 A. Yes, sir.

4 Q. Did you ever ask Mr. Swetnam, before that meeting, about
10:20 5 whether he was successful in setting up the captive?

6 A. No, sir.

7 Q. Did you ask him what the premium would be to the hospital?

8 A. No, sir, I didn't.

9 Q. Weren't you concerned that Mr. -- what would you say if
10:21 10 Mr. Springfield had asked you about this policy? Isn't that
11 something that you would want to be aware of to tell him?12 A. Well, there's two parts to that. Number one,
13 Mr. Springfield knew I didn't deal with the technical side of
14 the account; and, number two, if he would have asked me for
10:21 15 that premium, I would have said, "I'll find out from Mike, and
16 I'll give you a call."17 Q. So, if he would have asked you a question, then you would
18 have called Mr. Swetnam and asked him?19 A. I would have gone to the only person I know that could have
10:21 20 answered the question, yes, sir.21 Q. But you didn't ask Mr. Swetnam any questions about these
22 policies before you went down to Mexico?

23 A. No, sir.

24 Q. Okay. So, you have dinner; and you didn't see Mr. Swetnam
10:21 25 give Mr. Cook these policies. And then you go back to Texas.

McConnell Cross of Carter

10:21

1 A. Yes, sir.

2 Q. Is that right?

3 Okay. And then you testified -- you know, the
4 next thing that Mr. Colvin asked you about was that \$425,000
10:21 5 check?

6 A. Okay. Yes, sir.

7 Q. Do you remember talking about that?

8 A. Yes, sir.

9 Q. And do you remember telling the jury yesterday that
10 10 Mr. Swetnam gave you this \$425,000 check while you were having
11 lunch with a friend in Harlingen?

12 A. No, sir. With Jamie Whittemore in McAllen.

13 Q. In McAllen?

14 A. That's correct.

15 Q. Okay. I apologize.

16 And you testified this was a social lunch?

17 A. He's a friend of both of ours, yes, sir.

18 Q. And that Mr. Swetnam gave you this check for \$425,000 and
19 told you he needed you to deposit it in an account -- or open
20 an account for him because he had too much money in his
21 account?

22 A. Yes, sir, that's correct.

23 Q. And do you remember how much you told the jury yesterday
24 that he said he had in his account?

25 Q. It was a little over \$1.8 million.

McConnell Cross of Carter

10:22 1 Q. And you've been sitting here this entire trial, right?

2 A. Yes, sir.

3 Q. Under the screen over there?

4 A. Yes, sir.

10:23 5 Q. And you saw Mr. Boyden talk about all of these bank records
6 as we went through the case?

7 A. Yes, sir.

8 Q. Do you remember talking about -- do you remember Mr. Boyden
9 talking about Government's Exhibit 1G?

10:23 10 A. No. But I'll sure look at it.

11 Q. Government's Exhibit 1G is Mr. Swetnam's bank records -- do
12 you remember that -- for the Swetnam Insurance Agency account?

13 A. Yes, sir.

14 Q. And, so, this lunch was September 5th. And can you tell
10:23 15 the jury what it says the balance on that account was
16 September 5th?

17 A. It says "\$942,000."

18 Q. And do you see the withdrawal on the check that you
19 received, \$425,000 taken out 9-6?

20 A. Yes, sir.

21 Q. See that on that account?

22 So, you testified that you got this check and
23 you're having lunch with your banker friend, correct, in
24 McAllen?

25 A. Yes, sir.

McConnell Cross of Carter

10:24

1 Q. And he's a banker at what bank?

2 A. At the time, it was McAllen National Bank; and now it's
3 called Border Capital Bank.

4 Q. Did you have an account at that bank?

10:24 5 A. I did later. I didn't then.

6 Q. In fact, you opened an account later with some of the
7 proceeds from some of these policies. Is that right?

8 A. Yes.

9 Q. And that happened, you remember, in October or September?

10 10 A. No. It was in September, the 13th, 14th, somewhere in
11 there.12 Q. Why would Mr. Swetnam give you a check for \$425,000 to
13 deposit into one of his own accounts or to open an account for
14 him?10:24 15 A. All Mike said was, "I've got too much money in this
16 account, and I want you to go and open an account for me, for
17 Swetnam Insurance Services" and --

18 Q. And were you able to do that?

19 A. No, sir.

20 20 Q. And you said you weren't able to do that because -- you
21 know, you drove around to different banks?

22 A. No, sir.

23 Q. No? That's not what happened?

24 A. I didn't drive around to different banks, no, sir.

20:25 25 Q. Okay. You went to one bank?

McConnell Cross of Carter

10:25

1 A. Yes, sir.

2 Q. But you couldn't open an account for him because you
3 weren't on the signature card?4 A. That's correct. The banker told me, "I can't open an
10:25 5 account for Swetnam Insurance Services from you because you're
6 not a signatory on his account."7 Q. Wouldn't it have been easier for Mr. Swetnam just to give
8 the check to your friend at lunch, the banker, and have him
9 deposit it into a different account for him?10 A. I don't -- I don't know, and it really wasn't my concern.
11 I just do what my employer asks me to do.

12 Q. Did you ask him?

13 A. No.

14 Q. Did you ask him any questions, "Hey, hey, Mike, why are you
10:25 15 giving me this \$425,000?"16 A. Well, number one, Mike wasn't giving me \$425,000. Mike
17 wrote a check for \$425,000 and instructed me to go open an
18 account for Swetnam Insurance Services.

19 Q. But the check was written to you?

20 A. Well, somebody had to endorse it and put it in the bank.

21 Q. Why wouldn't he just write it to himself, Michael Swetnam
22 to Michael Swetnam, so you could go deposit it in one of his
23 accounts?

24 A. I have no idea. It happened --

25 Q. Wouldn't that have been easier?

McConnell Cross of Carter

10:26

1 A. -- in the banker's office.

2 Q. And you didn't ask, did you?

3 A. No, sir.

4 Q. Didn't you think that was an unusual request from
10:26 5 Mr. Swetnam, to give you that?6 A. You would have to know Mr. Swetnam; but, no, sir, it was
7 not an unusual request.

8 Q. But you didn't ask him any questions about it?

9 A. No, sir.

10 Q. And you weren't able to open a different account -- what
11 did you say about the tax ID? I was a little bit unclear on
12 that.13 A. Okay. I tried to open an account for Swetnam Insurance
14 Services and was told I couldn't because I didn't sign on any
10:26 15 of his accounts. He did not want it just to go into one of --
16 by the way, they had -- Mr. Smith, Mr. Reagan, Mr. Swetnam,
17 Smith-Reagan Agency and Swetnam Insurance Services all had
18 accounts at Frost Bank, which is the primary reason I went to
19 Frost Bank.

20 I said, "Well, can I open a commercial account?"

21 And the lady said, "Sure. Do you have a tax ID
22 number?"

23 And I said, "No, ma'am."

24 And her name is Karen Adams.

25 And she said -- I said, "Well, what can I do?"

McConnell Cross of Carter

10 : 27 1 This isn't my money. It belongs to Swetnam Insurance Services.
2 He doesn't want it in one of the Swetnam accounts here. He
3 wants a new bank account. What can I do?"

10 : 27 4 She said, "How about if I set up a d/b/a account
5 like I've done for Mike?"

6 I said, "That's fine for me. It's not going to
7 be here very long, I don't think. So, you can have it."

8 Q. So, you couldn't open an account for Mr. Swetnam; so, you
9 opened an account in "Brent Carter Insurance Services"?

10 : 27 10 A. I opened it as "Brent A. Carter d/b/a Carter Insurance
11 Services."

12 Q. And had you filed any d/b/a with the State of Texas?

13 A. No, sir. That's the point. I didn't have to. She said
14 she could open it as if it was a sole proprietorship and I
15 didn't need a tax ID number.

16 Q. Was there any company called --

17 A. No, of course, not.

18 Q. -- Brent Carter -- so, you just made that up?

19 A. I just did -- it was actually Ms. Adams' suggestion. That
20 was a way to open an account.

21 Q. Oh, she told you to make it up?

22 A. No. I didn't make it up, sir. I mean, it was -- it was
23 her suggestion. She said, "I could open an account for you
24 like I've done for Swetnam."

10 : 28 25 I said, "Then, let's do it."

McConnell Cross of Carter

10:28 1 Q. You said it's not a real company?

2 A. No, it was never intended to be a company.

3 Q. So, she told you to make up a fake company; and that's what

4 you did?

10:28 5 A. In order to get it into an account, yes, sir. I didn't

6 want it in my name individually.

7 Q. Why didn't you just give it back to Mr. Swetnam?

8 A. That's not what he asked me to do, sir.

9 Q. Did Swetnam tell you that he had just gotten paid on a

10 hurricane policy?

11 A. No, sir.

12 Q. He didn't mention any -- anything about where this money

13 came from?

14 A. No, sir.

10:29 15 Q. He just said that he had too much money in his account?

16 A. That is what he told me, sir.

17 Q. He told you \$1.8 million, but we see -- on Exhibit 1G we

18 have \$942,000?

19 A. Okay.

10:29 20 Q. And, so, ultimately, you deposit this money, the \$425,000

21 that the hospital paid to purchase insurance, into your own

22 account which you opened in the name of Brent Carter Insurance

23 doing business as -- what is it? D/b/a --

24 A. -- Carter Insurance Services.

10:29 25 Q. A fake company.

McConnell Cross of Carter

10:29 1 A. No, sir, it was not a fake company. It wasn't a company.
2 And I had no idea where this \$425,000 came from.
3 This was just money that was in an account in McAllen when we
4 went to lunch.

10:30 5 THE COURT: Did he, Mr. Swetnam, ask you to do
6 anything comparable before or after that?

7 THE WITNESS: No, sir.

8 BY MR. McCONNELL:

9 Q. Why would you put so much money into your own account?

10 A. Well, I think I've stated I tried several other options. I
11 tried to open an account for Swetnam Insurance Services. I
12 tried to open a commercial account.

13 As I stated yesterday, I did not want to be
14 associated with the money. And Ms. Adams said, "Well, I can
15 set up a d/b/a."

16 Q. Why not -- why wouldn't you want to be associated with the
17 money?

18 A. Because, sir, it was not my money.

19 Q. It had -- the check has your name on it?

10:30 20 A. Well, I -- I've explained, I believe --

21 Q. You opened an account. Isn't that being associated with
22 the money?

23 A. Yes, sir.

24 Q. So, you made up Brent Carter Insurance Services. And
10:31 25 you're aware that these policies, these hurricane policies,

McConnell Cross of Carter

10 : 31 1 that these companies didn't exist either, are you not?

2 A. I am -- I am now under the impression that they don't

3 exist, yes, sir.

4 Q. Somebody made up those companies, too.

10 : 31 5 A. Okay.

6 Q. Is that right?

7 A. (No response).

8 Q. Do you know that now?

9 A. I -- I can't believe --

10 Q. Are you telling the jury these are really companies?

11 A. No, sir. I'm not telling the jury anything about these

12 companies.

13 Q. So, after -- after you deposited this check into Brent

14 Carter Insurance Agency, what -- and that's a Frost Bank

10 : 31 15 account?

16 A. Yes, sir.

17 Q. Frost Bank account. A short period after that, Mr. Swetnam

18 tells you there's a problem with the captives?

19 A. Yes, sir.

10 : 32 20 Q. And did you ask him what the problem was?

21 A. I was -- no. I really didn't deal with the technical side

22 of the account. I mean --

23 Q. So -- so, you knew that you went down to Mexico for a

24 captive -- a meeting on captives because you couldn't do that

10 : 32 25 in Texas?

McConnell Cross of Carter

10:32

1 A. Yes, sir.

2 Q. Four days later you get a check for 425 -- you didn't see
3 any policies exchanged, cover notes?

4 A. No, sir.

10:32 5 Q. Okay. Four days later you get a check for \$425,000, which
6 happens to be just about half the premium that the hospital
7 paid on the cover notes but you didn't know that and then
8 Mr. Swetnam gives you the check for \$425,000, right?

9 A. Yes, sir.

10 Q. And tells you he has too much money in his account and he
11 needs to get rid of this money.

12 You didn't want to be associated with it, right?

13 A. I just knew it wasn't my money.

14 Q. And you didn't ask him where the money came from, right?

10:33 15 A. No, sir.

16 Q. Okay. And you went and opened up -- because you couldn't
17 put it in Swetnam's -- one of Swetnam's accounts because you
18 weren't on the account; you couldn't open up a new account
19 because you didn't have a tax ID number, correct?

10:33 20 A. Correct, sir.

21 Q. And then you opened your own account and made up a d/b/a
22 and deposited the \$425,000 in that account?

23 A. Yes, sir.

24 Q. Okay. Then you find out that there's a problem with the
25 captives, but you don't ask him what the problem is. Weren't

McConnell Cross of Carter

10 : 33 1 you concerned for your friend Mr. Springfield and your friend
2 Mr. Vela?

3 I mean, if there was a problem with the captives
4 and they didn't have hurricane insurance, wouldn't you want to
10 : 33 5 tell your friends, "Look, I mean, there may be an issue here"?

6 A. Well, "there may be an issue here" is an opportunity for an
7 agency to be of service. If there was an issue there, I
8 believe Mike would have let them know. I mean, I'm not trying
9 to --

10 : 34 10 Q. Did you ask him? Did you ask him if he let them know?

11 A. No, sir. As far as I know, there was never a lack of
12 coverage.

13 Q. As far as you know, there was never a lack of coverage?

14 A. I had no reason to believe there wasn't coverage.

10 : 34 15 Q. But you testified you gave the letter in the envelope
16 addressed to Mr. Springfield saying that the hospital had no
17 coverage under those policies?

18 A. I didn't read the letter, sir. I just took an envelope
19 that was sealed from the basket on the end of the desk.

20 Q. Just a delivery man?

21 A. Yes, sir.

22 Q. That pays pretty well, \$425,000 for the one policy and all
23 you had to do was take the letter to the hospital, telling them
24 that that policy didn't exist and they didn't have any
10 : 34 25 insurance. Is that right?

McConnell Cross of Carter

10 : 34 1 A. I don't -- I don't know what was in the letter and -- I
2 mean, I --

3 Q. What else did you do to earn --

4 THE COURT: Just a second. Let him finish his answer.

10 : 35 5 A. Well, what else I did -- I mean, I'm in a relationship
6 business. There are people that make lots more money in
7 Houston introducing people to the right people and being the
8 right person, being the person that is the contact on accounts.
9 Law firms have people that -- that find clients. They get paid
10 well.

11 BY MR. McCONNELL:

12 Q. But they aren't selling fake insurance.

13 A. Neither was I, sir.

14 Q. Have you read Mr. Swetnam's deposition?

10 : 35 15 A. Yes, sir.

16 Q. How many times?

17 A. I don't know. I've seen it several times since the civil
18 suit.

19 Q. Have you read it in anticipation of your testimony here
10 : 35 20 today?

21 A. Not recently. I've read it.

22 Q. Did you sit down and go over your testimony today with your
23 attorneys?

24 A. Of course.

10 : 35 25 Q. And they didn't show you the civil deposition?

McConnell Cross of Carter

10:36

1 A. No, sir.

2 Q. I'm showing you Page 230, what's been admitted as
3 Government's Exhibit 12. Can you start reading at the top of
4 the page there?

10:36 5 A. Yes, sir.

6 "Who told you that there was a problem with the
7 cover notes?"8 And the answer: "I determined that about the --
9 I determined that about the 5th or the 6th. Joe told me that
10 he couldn't get the deal together. I knew I had a melted down
11 deal. So, I called -- I believe I called Brent, because him
12 and Jim were out playing golf. I asked him to put Brent on his
13 phone, and he did. I told him, 'I've got a problem.'"

14 Okay. You want me to keep going, sir?

10:36 15 Q. Please.

16 A. "So, the first time you informed Mr. Springfield about
17 this, about the 5th, about the 6th -- 5th or 6th probably was
18 via phone?"

19 "The only time I informed him about it, yeah."

20 "And he -- you called Mr. Carter and said, 'Hand
21 the phone to Mr. Springfield'?"

22 "They were golfing, I believe, that day."

23 Can you move it up?

24 "They were golfing that day, I believe. Yeah."

25 "And that would be about the 6th or 7th of

McConnell Cross of Carter

10:37

1 September?"

2 "Somewhere in there."

3 Q. So, is that right? Is that when you found out there was a
4 problem with the captives, when you were out on the links with
5 your buddy Mr. Springfield?6 A. I didn't hear anything about a captive on the golf course,
7 no, I did not.

8 Q. Where did you hear there was a problem with the captive?

9 A. In the office.

10 Q. In the office? And what did Mr. Swetnam say to you, if you
11 remember?

12 A. He said he was having trouble getting the coverage down.

13 Q. Did you call your friend that we heard testify, Mr. Beck,
14 and say, "You know, there may be an issue here. What should I
15 do?"

16 A. No, sir.

17 Q. Did you go ask Mr. Reagan?

18 A. No, sir.

19 Q. Did you go ask Mr. Smith?

20 A. No, sir.

21 Q. Didn't you think Mr. Reagan would probably want to know
22 since he was supposed to go to that meeting in Mexico and you
23 went in his stead?

24 A. Actually --

25 Q. I'm sorry. Mr. Smith.

McConnell Cross of Carter

10:38

1 A. Mr. Smith. That's okay.

10:38

2 Mr. Smith was supposed to go and -- I mean, I
3 officed in Harlingen -- if you'll let me explain for you, I
4 officed in Harlingen. So, I would come out to San Benito and
5 come in. I would stop by and see -- if I was working on a home
6 owners, I would go by and see the lady that did that. If I was
7 working on a commercial account, I would go see the person that
8 handled that.

9

10:38

10 And, then, on the way out, I would stick my head
11 in and say, "You got anything that needs to go?" And I would
12 do that for Mr. Smith, Mr. Reagan and Mr. Swetnam.

10:38

12 And Mike said, "Yeah, yeah. Here, take this
13 stuff and" -- on a normal basis. I'm not talking about a
14 specific event. He would say, "Here, take this stuff." And it
15 was in his basket.

10:39

16 If there was a problem with the windstorm at the
17 agency, people would have been very busy. And Mr. Smith was
18 the agent on the account, and they would have handled the
19 technical side of that account.

20

20 Q. But I thought you said you were the point person on the
21 hospital account.

22

22 A. I was the point person on contact with the hospital and on
23 taking and gathering information.

24

24 Q. I'm showing you Page 228 from the same deposition.

10:39

25 A. Okay.

McConnell Cross of Carter

10:39 1 Q. Can you read this bottom part, where my finger is?

2 A. Yes, sir.

3 "Did they know that when you gave this to the
4 hospital, that that insurance wasn't actually in place?"

10:39 5 And he answers, "No."

6 Oh, then, it says, "Just you and Mr. Carter knew
7 that?"

8 Q. Can you keep reading, this next page?

9 A. "Just me at the time that I gave it to the hospital.

10:39 10 Okay."

11 "And then, when you gave Carter the check, you
12 told him?"

13 "Told him it was falling apart, I think I'm
14 trying to get it back together, yeah."

10:40 15 Q. Did you ever tell Ward Cook there was a problem with the
16 captives?

17 A. No, sir. I didn't talk to Ward Cook about coverage.

18 Q. What about Manny Vela, did you ever tell him there was a
19 problem about the captives?

10:40 20 A. No, sir.

21 Q. After -- in this letter -- and you heard testimony that the
22 hospital doesn't have any record of this letter?

23 A. Yes, sir.

24 Q. This letter that was given -- so, you get the -- you get
25 the check on 9-5-2006, right?

McConnell Cross of Carter

10:40 1 It's dated 9-5-2006; do you remember that?

2 A. Yes, sir.

3 Q. And then, a couple of days later, September 7, we have this
4 letter. And this is the letter that you -- you remember taking
10:41 5 something to the hospital around this period of time?

6 A. In all fairness, I don't remember taking something known as
7 this letter.

8 Q. That's not what I asked. I asked do you remember taking
9 something to the hospital around this time.

10 A. Well, if that's --

11 Q. You were looking in your diary or whatever.

12 A. -- what you're thinking, that's -- absolutely, yes, sir.

13 Q. Okay. And, so, this letter tells Mr. Springfield that the
14 hospital insurance -- the hospital isn't covered under these
10:41 15 cover notes. Is that a fair statement?

16 A. Okay. Yes, sir.

17 Q. And, so, what -- what is -- what is the only option for the
18 hospital, under this letter?

19 A. The only other option that may be possible for us to offer
10:41 20 the hospital is a loss guaranty for the same monies.

21 Q. And this is Government's 13. And can you read down there
22 at the bottom?

23 It says, "If you have any questions, please do
24 not" --

10:42 25 A. -- "hesitate to contact Brent or me."

McConnell Cross of Carter

10 : 42 1 Q. And you said that -- yesterday you testified you don't know
2 why you would be in there because, if there was a problem and
3 they did contact you, you would just go ask Swetnam?

10 : 42 4 A. Well, you know, you've stated that I was the front man on
5 the account. Mr. Swetnam and Mr. Springfield didn't talk very
6 often. I mean, it wasn't a real common occurrence --

7 Q. I didn't state that. You stated that. I was stating what
8 you said, that you were the front man on the account.

9 A. Okay. Well, then you stated it correctly.

10 : 42 10 And -- and if Mr. Springfield would have called
11 me and said, "Hey, I need to talk to Mike about something. Get
12 him to give me a call," I would have done so.

13 Q. And did he ever call you after he received this supposed
14 letter --

10 : 42 15 A. No, sir.

16 Q. -- and say, "Brent what's going on here? We don't have any
17 hurricane coverage?"

18 A. He never called me.

19 THE COURT: Mr. McConnell, you might want to look for
20 a break point. I need to take up a couple of other matters.

21 MR. McCONNELL: This is a good break point.

22 THE COURT: Ladies and gentlemen, I apologize. I know
23 you're not ready for another break. If you want to, you can
24 remain in the courtroom. I have a criminal matter and a civil
25 matter. We'll get back to you as soon as we can.

McConnell Cross of Carter

10:43 1 Would all rise for the jury?

2 *(Other matters were heard before the Court from 10:42 to*
3 *11:18 a.m.)*

4 A MARSHAL: All rise for the jury.

11:18 5 *(Jury present)*

6 THE COURT: Members of the jury, please be seated.

7 All right. You may resume.

8 BY MR. McCONNELL:

9 Q. Mr. Carter, before we broke, we were talking about the
10 \$425,000 check. So, we kind of talked about, chronology wise,
11 when you got the check and how it got into the your Frost Bank
12 account.

13 A. Yes, sir.

14 Q. Do you recall that?

11:19 15 So, at some point after that deposit -- we saw
16 the deposit, saw the checks dated 9-5 of '06; and it was
17 deposited around the same time period, maybe the next day?

18 A. I think it was -- I think it was deposited that day.

19 Q. That day.

11:19 20 It's written out to you. Is that -- you endorsed
21 the back of it there?

22 A. Yes, sir.

23 Q. It's from Swetnam Insurance Service.

24 And then we talked about this letter two days
11:19 25 later, addressed to Mr. Springfield, and how it says,

McConnell Cross of Carter

11:19 1 September 7th, 2006, "contact Brent or me." Do you remember
2 talking about all that?

3 A. Yes, sir.

4 Q. And you said that you don't recall whether you delivered
11:20 5 this letter, you just took something over there?

6 A. Yes, sir.

7 Q. Just making sure we're on the same page.

8 At some point in September of 2006 Mr. Swetnam
9 told you you could keep this money.

11:20 10 A. Yes, sir. Okay.

11 Q. Do you -- I'm not trying to put words in your mouth. Is
12 that what he told you?

13 A. I mean, he said, "Congratulations. That's your bonus for
14 last year and your commission and bonus for this year," yes,
11:20 15 sir.

16 Q. So, your bonus for 2005 and 2006?

17 A. Yes, sir.

18 Q. So, you started in 2004, right?

19 A. Yes, sir.

11:20 20 Q. And you became the point person on the account in
21 December 2005. Is that what you said?

22 A. I guess officially, yes, sir. I was involved before that.

23 Q. So -- and the check was from Mr. Swetnam, right, Swetnam
24 Insurance Services?

11:21 25 A. From Swetnam Insurances Services, yes, sir.

McConnell Cross of Carter

11:21 1 Q. And signed by Mr. Swetnam. And Mr. Swetnam told you that
2 this was -- this was a bonus for work you had performed in the
3 past?

11:21 4 A. Yes, sir.

11:21 5 Q. Did you thank him?

6 A. Absolutely.

7 Q. I mean, that's -- 425,000, that's a lot of money?

8 A. It absolutely is. It was more money than I had ever made
9 in my life.

11:21 10 Q. Because what did you say when Mr. Colvin was -- when you
11 were talking to Mr. Colvin? Did you say the most you had made
12 was 80,000?

13 A. In -- before I came to the Valley, that's probably
14 accurate.

11:21 15 Q. Wow. So, that's, like, five times more than you had ever
16 made in your life, the highest paying --

17 THE COURT: Annual salary.

18 BY MR. McCONNELL:

19 Q. -- annual salary?

11:21 20 A. Well, this wasn't salary; but, I mean, yes, it was a lot of
21 money.

22 Q. Did you go thank Mr. Smith?

23 A. No.

24 Q. Did you go thank Mr. Reagan?

11:22 25 A. No, sir.

McConnell Cross of Carter

11:22 1 Q. Did you ask them, "Wow. I mean, this is such a generous
2 bonus"? Did you go talk to them about the bonus?

11:22 3 A. Not directly at that time. Michael explained at the time
4 that -- he told me that the money was my income, that he was
5 making up for a discrepancy in the payment that I was supposed
6 to have received for '05. And he told me at that time that
7 Mr. Smith had shorted me on income that they had agreed to pay
8 me in '05.

9 Q. And that's how you keep score, right, is money? Isn't that
11:22 10 what the e-mail says?

11 A. Well --

12 Q. Is that what the e-mail says?

13 A. That is what the e-mail says.

14 Q. So, 425,000. And you get that six days after the
11:23 15 August 29th, 2006, meeting in Mexico with the --

16 A. Yes, sir.

17 Q. Did you tell Mr. Springfield, your good buddy, that you had
18 gotten a \$425,000 bonus?

19 A. No, sir.

11:23 20 Q. Did you tell Mr. Cook?

21 A. No, sir.

22 Q. Mr. Vela?

23 A. No, sir.

24 Q. Did you tell anyone at Smith-Reagan, other than
11:23 25 Mr. Swetnam?

McConnell Cross of Carter

11:23 1 A. I don't believe so.

2 Q. Do you remember yesterday, when Mr. Colvin was asking about

3 the \$425,000, you said that you thought it was "curious"?

4 And I thought that was an interesting choice of

11:23 5 words. Do you remember that?

6 A. I -- yes, sir.

7 Q. Had you ever received a \$425,000 check before in your life?

8 A. No, sir.

9 Q. It was curious --

11:23 10 A. Yes, sir.

11 Q. -- but you didn't ask any questions about it.

12 A. I asked questions about -- about the accounting of it. I

13 wanted to know where it came from. I had no reason to doubt

14 that people in the agency didn't make huge incomes, sir. We --

11:24 15 Q. When did you ask questions about the accounting?

16 A. Subsequent to this check, after that.

17 Q. When?

18 A. I don't recall exactly. I talked to Mr. Smith about it.

19 Q. Oh, you did talk -- I thought you just said you didn't talk

11:24 20 to Mr. Smith about the check.

21 A. I talked to Mr. Smith about the accounting on the account.

22 I didn't talk to him specifically about this check. He signed

23 on this account, to my understanding. I assumed he knew about

24 it.

11:24 25 Q. Wouldn't you ask him -- if you're asking about the

McConnell Cross of Carter

11:24 1 accounting for the account, wouldn't you ask him about a
2 \$425,000 check?

3 A. No, sir. I wanted to go over the entire account.

4 Q. If -- well, you testified on direct that when you asked
11:24 5 Mr. Swetnam about, you know, what the account's worth and he
6 said 1.8 million -- remember you were talking about the letter
7 that you were --

8 A. Yes, sir.

9 Q. I mean, \$425,000, that's a substantial part of 1.8 million.
11:25 10 Wouldn't you agree?

11 A. It's actually a little bit less than a fourth over two
12 years. Yes, sir, it is.

13 Q. So, if you're talking about the accounting to Mr. Smith,
14 you wouldn't mention that you received a check which is equal
11:25 15 to almost a fourth of what you believed you told Mr. Colvin was
16 the income on the account?

17 A. Well, I believed that the account is generated -- this
18 is -- we're way further down the road now. We're in, like --
19 whenever that other e-mail was -- it was in, like, October or
11:25 20 November.

21 But I -- 425,000 is -- is not a fourth of
22 1.85 million. And, in theory, I was due a fourth. So, it
23 didn't seem out of the ordinary, if the account did 1.8 million
24 over two years, for me to receive a fourth. That was what they
11:25 25 told me they were going to do.

McConnell Cross of Carter

11:26 1 Q. How much work did you do on that hurricane policy?
2 Because I remember -- we went through all these
3 e-mails. They were all with Mr. Thompson and Mr. Swetnam. I
4 mean, what did you do?
11:26 5 Did you make this document --
6 A. No.
7 Q. -- this Exhibit 1A?
8 A. No, sir. I did no work on the procurement of the lines of
9 coverage at all.
11:26 10 Q. Nothing?
11 A. No, sir. And -- and neither did Mr. Reagan, for that
12 matter.
13 Q. But he didn't get any money, did he, off of these policies,
14 Mr. Reagan?
11:26 15 A. I can't tell you, sir. I never saw the accounting.
16 Q. You can't tell me -- you sat through over a week of this
17 trial. You don't remember if Mr. Reagan got any money off of
18 this first policy?
19 A. You have to realize that when you look at the --
11:26 20 Q. The answer -- when Mr. Colvin is talking, you can answer
21 the question that you want to --
22 THE COURT: Is what you want to explain responsive to
23 the question?
24 THE WITNESS: Yes, sir, ultimately.
11:26 25 THE COURT: Okay. Go ahead.

McConnell Cross of Carter

11:26 1 THE WITNESS: In short order.

2 A. When you look at -- whether it be the proposal that was
3 given, the Power Point, or you look at any information that was
4 given to the hospital, none of which I generated -- I didn't do
11:27 5 the Power Point or anything -- you would see, in this case, for
6 example the TWIA, the -- whoever it was, CNA or Zurich or
7 whoever it was and then there's layers and yada, yada, yada,
8 and then at the bottom there's a total that says, you know,
9 whatever -- whatever the total was, 2.563 million. It did not
11:27 10 say, to my recollection, anywhere in there what any one section
11 of that cost. I mean, do see what I am saying?

12 And I'm not trying to skirt your question -- your
13 question at all.

14 BY MR. McCONNELL:

11:27 15 Q. Not really, but let me ask you a different question.

16 A. Yes, sir.

17 Q. So, we talked about the 1.8 million in the e-mail which was
18 sent -- which I don't characterize as a "long way down the
19 road." It was sent the next month.

11:27 20 A. Okay.

21 Q. You mentioned that you were due a fourth, right?

22 A. That's what I was told.

23 Q. That's what you thought --

24 A. Yes, sir.

11:28 25 Q. -- a fourth?

McConnell Cross of Carter

11:28 1 Okay. So, you got -- in September, you got
2 \$425,000 off of this policy. Then you got another \$250,000
3 from the Zurich policy around the same time period, just a
4 little while later. Am I right?

11:28 5 A. Yes, sir.

6 Q. And I'm not great at math, which we saw earlier in the
7 trial; but I added that up to 675,000, which would be roughly a
8 third of 1.8 million.

9 A. Okay.

11:28 10 Q. Is that -- I mean, is that right?

11 A. That sounds accurate.

12 Q. Not a fourth. I'm just --

13 A. You're on the exact reason that I asked for some
14 understanding of the accounting.

11:28 15 Q. And 1.8 was over two years, was it not?

16 A. Yes, sir, that's what I was told.

17 Q. Okay. So, you get this bonus and -- curious bonus; and
18 were you excited?

19 A. Absolutely.

11:28 20 Q. You had already deposited the bonus into the Frost account,
21 right?

22 A. Yes, sir.

23 Q. Doing business as Brent Carter.

24 And, then, two weeks -- you deposited on
25 September 5th, 2006, you said, the same day, right?

McConnell Cross of Carter

11:29 1 A. Yes, sir.

2 Q. And, then, two weeks later, do you recall transferring
3 \$275,000 in opening up another account?

4 A. Yes, sir.

11:29 5 Q. And that account -- your wife is on that account, right?

6 A. Yes.

7 Q. And that was at McAllen Bank, but I think it's now
8 Border --

9 A. Border Capital.

11:29 10 Q. -- Border Capital?

11 A. McAllen Bank at that time.

12 Q. And then, the next day, you transferred a hundred thousand
13 dollars out of that Brent Carter Insurance Services account --

14 A. Yes, sir.

11:29 15 Q. -- into a Wells Fargo account?

16 A. Yes, sir.

17 Q. Do you remember doing that?

18 A. Was it Wells Fargo or was it First Community Bank?

19 Q. I believe it was Wells Fargo.

11:30 20 A. I'll take your word for it.

21 Q. It was another bank, a different account, other than the
22 two --

23 A. Sure.

24 Q. -- that we just talked about.

11:30 25 A. Sure.

McConnell Cross of Carter

11:30 1 Q. Okay. And you deposited the \$250,000 Zurich check for
2 the -- for those first umbrella policies that I just alluded
3 to, that went into the same Brent Carter Insurance account. Is
4 that right?

11:30 5 A. Yes, sir.

6 Q. Okay. And, then, that was done on September 20th, 2006.
7 That's when you got the 250,000, right?

8 A. Okay.

9 Q. Okay. And then, the next day, you got a \$75,000 cashier's
11:30 10 check and a \$25,000 cashier's check, within two days, out of
11 that account. Do you remember doing that?

12 A. No. But I know what the \$75,000 check was for. Yes, sir,
13 I remember doing that.

14 Q. Okay. So, that was deposited on 9-20. And then we have
11:30 15 the -- the account -- the first deposit on 9-5-06. And do you
16 remember what you did with some of that money?

17 A. Yes, sir.

18 Q. Did -- in fact, did you have a pretty sizeable tax bill due
19 from 2005?

11:31 20 A. Yes, sir.

21 Q. Do you remember how much it was?

22 A. I do not.

23 Q. Thirty-five thousand sound familiar?

24 A. I wouldn't doubt that a bit.

11:31 25 Q. Okay. So, October 12th, 2006, you paid the IRS \$35,000

McConnell Cross of Carter

11:31 1 that you owed from the tax bill -- you owed the tax man from
2 your taxes the previous year?

3 A. Yes, sir. We filed extensions -- it seems that everyone at
4 the agency filed extensions. And when I got down there, I did,
11:31 5 too, and started paying my -- actually paying my taxes in
6 October.

7 Q. Did you have the money before you got the money from the
8 fake hurricane policy?

9 A. (No response).

11:31 10 Q. Thirty-five thousand, did you have that in your account
11 when you got -- before you got the money from the hurricane
12 policy and the Zurich policies?

13 A. I'm not certain. I doubt it.

14 Q. It was pretty helpful, wasn't it, to get \$425,000 to pay
11:32 15 off the tax man?

16 A. Yes, sir. I mean, it's -- it's always good to have money
17 to pay your taxes.

18 Q. Then you paid off a boat loan for Bobby?

19 A. (No response).

20 Q. Thirteen thousand dollars?

21 A. Yes, sir. I bought a small used boat.

22 Q. And, then, on September 25th, you spent \$26,000 at the
23 Jewelry Connection. Do you remember that?

24 A. Yes, sir.

25 Q. What did you buy at the Jewelry Connection for \$26,000?

McConnell Cross of Carter

11:32 1 A. My wife had lost her wedding ring when we moved to
2 Harlingen, and it had actually been an insurance claim. And we
3 had taken some of the money and set it aside to replace her
4 ring. And I took some of the money that I earned and I bought
11:32 5 her another ring.

6 Q. So, you took money that you previously had gotten from
7 insurance and the hospital's money and you bought your wife a
8 wedding ring?

9 A. Well, I actually took money that was my income and money
11:33 10 from insurance proceeds and bought my wife -- bought my wife a
11 wedding --

12 Q. Do you understand, sitting here today, that insurance was
13 never purchased with this \$425,000?

14 A. I understand, sitting here today, that I never associated
11:33 15 that \$425,000 with --

16 Q. That's not my question.

17 A. -- with any one policy.

18 Q. Do I understand --

19 MR. COLVIN: Your Honor, I object. I ask he be
11:33 20 allowed to answer the question.

21 THE COURT: Yeah, go ahead. The answer I see on the
22 transcript, "I understand, sitting here today, that I never
23 associated that 425,000 with" --

24 A. -- with any one insurance policy. That money -- you know,
11:33 25 we've talked about bank accounts. And Mr. Swetnam and Swetnam

McConnell Cross of Carter

11:33 1 Insurance Services had bank accounts in several banks that I
2 know of. I signed on none of them. It doesn't surprise me a
3 bit --

4 BY MR. McCONNELL:

11:34 5 Q. I know you want to tell your sorry.

6 THE COURT: No. Let him finish his answer.

7 MR. McCONNELL: It's not responsive to my question.

8 THE COURT: Then move to strike after he's finished,
9 but let him finish.

11:34 10 A. But the point is, for him to tell me on one day that, "I
11 want you to open an account for Swetnam Insurance Services --
12 I've got to go back and do some work -- and handle this for
13 me," to go actually do that did not trigger to me a couple of
14 days later that he's got trouble on a two and a half million
15 dollar property section of the hospital's business, that that
16 425 was somehow involved, at all.

17 BY MR. McCONNELL:

18 Q. You thought it was just bonus money?

19 A. No. At that time I thought it was Swetnam Insurance
11:34 20 Services' money, sir.

21 Q. Just the timing is -- is curious?

22 A. There's absolutely no doubt the timing is curious.

23 Q. So, \$26,000 at the Jewelry Connection. And, then, did you
24 also use \$40,000 of that money to pay off an MBNA credit card,
11:35 25 two cards, ending in 0724 and 2647?

McConnell Cross of Carter

11:35 1 A. I don't have the numbers memorized; but like a lot of young
2 couples with young kids, I was in the Valley originally at
3 \$4,000 a month and we had racked up a lot of credit card debt.
4 I don't think it's uncommon.

11:35 5 I'm not trying to make excuses. Yes, I had the
6 money. I set aside money for taxes and I paid off my debts,
7 yes, sir.

8 Q. And you used the \$425,000 that the hospital had given
9 Mr. Swetnam to purchase insurance?

11:35 10 A. I used the money that Mr. Swetnam and Swetnam Insurance
11 Services bonus'ed to me and called my income.

12 Q. So, let me ask you again my question that you didn't answer
13 few minutes ago.

14 A. Okay.

11:35 15 Q. Sitting here today -- and try to answer it. Sitting here
16 today, do you understand that the hospital never received any
17 insurance from that \$425,000?

18 A. I understand that that money is absolutely in dispute and
19 that is the absolute reason for the civil suit that I'm in the
20 middle of today.

21 Q. Do you understand that this policy that the hospital
22 purchased for \$936,000, they never got any insurance from that?

23 A. I don't understand that either, because I'm not an expert
24 regarding that guaranty that was supposedly delivered. I
25 don't -- I don't know, sir.

McConnell Cross of Carter

11:36 1 Q. Also, the guaranty protected the hospital?

11:36 2 A. I don't know the ramifications -- my gut feeling is that

3 there was no coverage on that -- on that property at that

4 point. But I didn't have anything to do with that.

11:36 5 Q. Do you care?

6 A. Absolutely, I care.

7 Q. The cash continued to flow.

8 A. It's semantics.

9 Q. Is it?

11:37 10 So, \$40,000 for MBNA. Do you also remember

11 purchasing \$6,000 worth of furniture?

12 A. Yes, sir. We had -- we bought a dining room set.

13 Q. And then \$1,800 for the Harlingen Country Club; \$3,000 to

14 Chase; and 2800 to American Express, all out of that account,

11:37 15 using the hospital's money?

16 MR. COLVIN: Your Honor, I object to the

17 characterization of it being the hospital's money. And I

18 object to this line of questioning, because it's really not

19 relevant to any issue in this case.

11:37 20 THE COURT: Well, the line of questioning, I think, is

21 relevant.

22 I will ask you to rephrase the last question.

23 BY MR. McCONNELL:

24 Q. These purchases, all using the \$425,000 which was part of

11:37 25 the \$936,000 that the hospital had given to Mr. Swetnam to

McConnell Cross of Carter

11:37

1 purchase insurance --

11:38

2 MR. COLVIN: Your Honor, I renew my objection. I
3 don't believe that that's what -- what he's testified to, that
4 it was part of the \$936,000; and I don't believe that's what
5 the record necessarily reflects.

11:38

6 MR. McCONNELL: It's in the bank record, your Honor.
7 THE COURT: I'm going to allow the question.
8 If you disagree with his premise, then feel free
9 to say so.

11:38

10 A. Well, I mean, as long as I properly explained it, yes, I
11 did receive as income \$425,000 from Swetnam Insurance Services.
12 And -- and if -- and at some point the hospital had at least
13 \$936,000 in Mr. Swetnam's and Swetnam Insurance Services'
14 account, that was commingled with other funds in Mr. Swetnam's
15 account, I assume -- or I was told.

11:38

16 And at some point -- I mean, ultimately, I don't
17 know where that dollar originated; but I have no doubt that I
18 was being compensated on the hospital account. I wasn't
19 being -- I mean, I was being compensated on the hospital's
20 account. There's no doubt about it.

21

BY MR. McCONNELL:

22

Q. This check was pretty tough to get rid of, wasn't it,
23 \$425,000?

24

A. Tough to -- I'm sorry. I don't understand the question.

11:39

25 Q. Well, you couldn't deposit it into an account for

McConnell Cross of Carter

11:39 1 Mr. Swetnam; you couldn't open up an account for Mr. Swetnam;
2 and you had, as a last resort, to open up your own account for
3 Brent Carter Insurance Agency.

11:39 4 A. Yes, sir. And just -- if I can explain a little bit for
5 you --

6 Q. You'll get your chance.

7 A. Okay. No. That's fine. I'm sorry.

8 Q. Your attorney is asking --

9 A. This is my first time in court, sir. I apologize.

11:39 10 Q. I know you want to give a speech, but you can do it with
11 your attorney.

12 MR. CLARK: Judge, I'm going to object to sidebar.

13 THE COURT: Yeah, we'll strike that. We'll strike
14 that.

11:39 15 BY MR. McCONNELL:

16 Q. So, as I understand your testimony, you did not draft this
17 document?

18 MR. McCONNELL: Ms. Loewe, can you put this on?

19 A. No, sir. I never saw that document until it was produced
20 in the civil suit.

21 BY MR. McCONNELL:

22 Q. And you didn't draft the other documents that were given to
23 Mr. Cook in Mexico?

24 A. Absolutely not.

11:40 25 Q. And you don't dispute that that happened; you just didn't

McConnell Cross of Carter

11:40 1 see it?

2 A. That's correct.

3 Q. Did you do any work on these insurance policies?

4 A. On -- in what way?

11:40 5 Q. Well, you didn't draft the document. Did you communicate

6 with Harry Thompson at all?

7 A. No, sir.

8 Q. Did you go to the British Virgin Islands?

9 A. No, sir.

11:40 10 Q. But you got \$425,000 from this first policy.

11 A. Okay.

12 Q. How long would it take you -- you just testified that you

13 made \$4,000 a month. How long would it take you to make

14 \$700,000, which was -- which would be the \$425,000 plus the

11:41 15 \$250,000 that you received from the Zurich policy?

16 THE COURT: How much -- how long would it take in

17 terms of 4,000 a month?

18 MR. McCONNELL: Yes, your Honor.

19 A. Let's see. Four thousand -- forty-eight -- roughly 15 --

11:41 20 14 years, 13 and a half years, something like that.

21 BY MR. McCONNELL:

22 Q. And then, in September, you made \$700,000 in one month. Is

23 that fair?

24 A. Yes, sir. That was the month that the biggest account of

11:41 25 the agency renewed, yes, sir.

McConnell Cross of Carter

11:41 1 Q. In fact, you made \$1.2 million a year to the day, isn't
2 that right?

3 A. I've never -- I don't know.

4 Q. You never -- you never thought about it?

11:41 5 A. No, sir. I -- it always renewed on September the 1st.

6 So --

7 Q. Okay. You got the first check from the hospital, the
8 \$425,000 that we looked at, on September 5th, 2006 --

9 A. Okay.

11:41 10 Q. -- right?

11 Then you get another check in September from the
12 Zurich policy, \$250,000, right?

13 A. Okay.

14 Q. And then the -- you get the check from the other windstorm
11:42 15 policy in June of 2007. Do you remember how much that check
16 was for?

17 A. Is that the one that was 274?

18 Q. I don't know. Is it 274, 294?

19 A. I don't know. I don't remember. I'm not -- I'm not -- I
11:42 20 just don't remember.

21 Q. You don't recall? You get a 200-something-thousand-dollar
22 check, and you don't recall how much it's for?

23 A. No, sir, I don't recall the exact amount.

24 Q. Okay. Then you get the last Zurich check 9-5 of 2007. Do
11:42 25 you recall that?

McConnell Cross of Carter

11:42 1 A. Okay. Yes, sir.

2 Q. So, you earned over \$1.2 million in the course of one year.

3 A. Okay. Two policy years. They're big policies; they're big

4 expenditures.

11:42 5 Q. That's not my question.

6 Okay. From August -- from September 5th, 2006,

7 to September 5th, 2007, did you earn \$1.2 million?

8 A. Okay. I'll take your word for it.

9 Q. Did you ever ask Mr. Swetnam why he was paying bonuses

11:43 10 instead of the Smith-Reagan Agency?

11 A. No, sir, because I got 1099's from both and because some of

12 the policies, due to my surplus lines relationships, they

13 renewed through Swetnam Insurance Services and some of the

14 policies were through Smith-Reagan. And, so, it was very

11:43 15 normal -- I mean, all four individuals got money from both

16 companies.

17 Q. Isn't it curious, though, that you never received a

18 sizeable bonus from -- like this, from Smith-Reagan?

19 A. I think -- well, I didn't receive one that big, no, sir.

11:43 20 Well, the biggest policies renewed through

21 Swetnam Insurance Services. I didn't think it was odd.

22 Q. So, let's go back to September of '06. We talked about

23 425,000 and where that money went. But you deposited the

24 money; and then, at some point, Mr. Swetnam tells you, "Good

11:44 25 job, Brent, a \$425,000 bonus for this year and last year"?

McConnell Cross of Carter

11:44 1 A. Yes, sir.

2 Q. Okay. But he also told you around the same period that
3 there was a problem with the hurricane policy.

4 A. Yes, sir.

11:44 5 Q. Do you recall that?

6 A. Yes, sir.

7 Q. And if you go to Mr. Swetnam's deposition, do you remember
8 the -- do you remember giving a binder to Mr. Ward Cook, an
9 insurance binder?

11:44 10 A. You're talking about the binder, the book?

11 Q. Yes, sir.

12 A. Yes, sir.

13 Q. You heard Mr. Ward Cook talk about it and you heard
14 Inspector Boyden talk about it, the binder that had the policy
11:44 15 letter on it?

16 A. Yes, sir.

17 Q. The letter signed by you. And then --

18 A. Yes, sir.

19 Q. -- threes pages into it, it had something about captives.

11:45 20 Do you remember that?

21 A. Okay. I didn't look at it.

22 Q. You didn't look at it in preparation for your testimony?

23 A. No. Mr. Smith had talked -- oh, no. I've never really
24 looked at that binder. Mr. Smith talked to Mr. Cook and asked
11:45 25 me to draft a letter that said, "Here, these policies are in

McConnell Cross of Carter

11:45 1 this binder."

2 I wrote the letter, "Per your conversation with
3 David Smith," went by, got the ladies to put the letter in the
4 big book. I took it to Mr. Cook.

11:45 5 And the reason I remember is I thought it was
6 very funny that the minute I sat down, he said, "Thanks," and
7 he pops open the binder, takes everything out, starts putting
8 it in files. They did all this work to compile the book for
9 him, and he took it all apart.

11:45 10 Q. But that information was important to Mr. Cook. He wanted
11 to save it. He was placing all those documents in each file to
12 go with the policies.

13 A. Yes, sir.

14 Q. Mr. Cook wanted to make sure that the hospital was
11:45 15 protected on all those policies?

16 A. Absolutely.

17 Q. Do you remember him testifying to that?

18 A. Absolutely.

19 Q. If you look at this deposition --

11:46 20 MR. CLARK: Which reference, please?

21 MR. McCONNELL: Page reference is 249, here at the
22 top, on the overhead.

23 MR. CLARK: Thank you.

24 BY MR. McCONNELL:

11:46 25 Q. If you -- can you start reading where it says, "And it

McConnell Cross of Carter

11:46

1 shows"?

2 A. Yes, sir.

3 "And it shows -- is purporting to show the layers
4 of windstorm coverage, right?"

11:46 5 "Yes, sir."

6 "And on the top of the layers it says,
7 '75 million captive insurers,' doesn't it?"

8 "Yes, sir."

9 "If the jury believes your testimony about the
11:46 10 guaranty, then this document is in error, right?"

11 "Yes, sir."

12 "And it was provided to Valley Baptist on
13 September 25th, 2006, right?

14 You believe --"

11:46 15 "Right."

16 I'm sorry.

17 "You believe that is in error?"

18 "Absolutely."

19 "And it should say, 'Mike Swetnam guaranty,
11:46 20 \$100 million.'"

21 Q. Keep going.

22 A. Could you move it a little bit?

23 Q. Yes.

24 A. "If you want them to reflect that, yes. This was taken
11:47 25 from a proposal and put in. And the proposal was done -- was

McConnell Cross of Carter

11:47 1 probably done, I would say, maybe in May."

2 "But you said Mr. Carter knew that the captives

3 had fallen through earlier, in September, right?"

4 And he answered, "Yes, sir."

11:47 5 Q. And September 25th, 2006, do you remember that day?

6 A. Yes, sir.

7 Q. Okay. And do you remember the binders that we were talking

8 about?

9 A. Yes, sir.

11:47 10 Q. September 25th, 2006?

11 A. Yes, sir.

12 Q. And you saw Mr. Cook flip through this binder. And he

13 talked about how you had signed it and it was cc'd to Manny

14 Vela, your friend, and he talked about this third page. Do you

11:47 15 remember that?

16 A. (No response).

17 Q. Do you remember him talking about the third page?

18 A. Okay. Yes, sir.

19 Q. Okay. And it discusses on this third page the captive's

11:47 20 reinsurers mentioned \$900,000 and the \$75 million worth of

21 coverage.

22 A. Yes, sir.

23 Q. Do you remember Mr. Cook talking about that?

24 A. Yes.

11:48 25 Q. And, so, your testimony is that when you gave this policy,

McConnell Cross of Carter

11:48 1 this binder set, to Mr. Cook -- that you did give it to
2 Mr. Cook and, when you did that, he took these pages and put
3 them in folders associated with the particular policies?

4 A. Yes, sir.

11:48 5 Q. And that's what he testified that he did because he was
6 concerned and wanted to make sure that the hospital was covered
7 on these policies. Do you remember that?

8 A. Yes, sir.

9 Q. Did you tell him when you gave him the policies, "Hey,
11:48 10 Ward, there's a problem with this windstorm coverage. You
11 should look into it"?

12 A. No, sir.

13 Q. Did you -- did Ward seem upset, when you gave him this --
14 gave him these binders, that the hospital didn't have any
11:48 15 hurricane insurance?

16 A. No, sir. We both believed that they did.

17 Q. And you testified that Ward Cook was in poor health.

18 A. Yes, sir.

19 Q. Do you remember that?

11:49 20 Did you tell Mr. Springfield at the time when you
21 dropped off the binders, "Hey, Jim, man, I got to be honest
22 with you. The hospital may not be protected under these
23 hurricane policies. There's an issue with this coverage"?

24 A. No, sir. I had no reason to believe that the hospital
25 didn't have coverage.

McConnell Cross of Carter

11:49 1 Q. So, you think Mr. Swetnam was incorrect in his statements
2 in this deposition?

3 A. Well, obviously, at this time I didn't have access to his
4 deposition. He hadn't been sued.

11:49 5 And he did tell me in September at some point
6 that I think is probably noted somewhere, that, you know, "Hey,
7 I've got some problems with this coverage and I've got to get
8 it replaced."

9 But, I mean, he got it replaced. Later on he
10 told me that he had gotten it -- he had gotten it taken care of
11 and gotten it replaced.

12 THE COURT: Once again, Mr. McConnell, I'm sorry to
13 interrupt; but at a convenient time we need to break for lunch.

14 MR. McCONNELL: Can I go through just five more
15 minutes, your Honor?

16 THE COURT: You may. You may.

17 BY MR. McCONNELL:

18 Q. And, so, you didn't tell Ward Cook that Mr. Swetnam had
19 told you that there was a problem with these captives?

11:50 20 A. No, sir. Because as Mr. Cook testified, he talked to Mike
21 about the technical side of the account.

22 Q. You knew you could slip it by him because he was in poor
23 health, didn't you?

24 A. No, sir. He was a very good friend of mine. That's not
11:50 25 the case at all.

McConnell Cross of Carter

11:50 1 Q. And you sent him an e-mail the next day, didn't you?

2 A. It's possible.

3 Q. You don't recall?

4 A. Can you show me?

11:50 5 Q. I thought you told Mr. Colvin that you had pretty much
6 memorized these e-mails.

7 A. I think -- I mean, I'll be familiar with it if it's been
8 produced, yes, sir.

9 Q. Well, it's been produced. It's been turned over.

11:50 10 A. I'm not trying to be a smart aleck. I'm just saying I
11 don't --

12 Q. (Indicating)

13 A. Right. Yes.

14 Q. Do you remember this?

11:50 15 A. Yes, sir, absolutely.

16 Q. And what day was this e-mail sent?

17 A. September the 24th.

18 Q. So, this would be what day in relation to these binders?

19 A. Well, you know -- oh, it would have been on the Sunday
20 before I took them over there on Monday.

21 Q. Yeah. So, the -- I was incorrect. So, the day before,
22 right?

23 A. Yes, sir.

24 Q. And --

11:51 25 A. Although --

McConnell Cross of Carter

11:51 1 Q. Mr. Colvin had you read some of this e-mail yesterday, but
2 he didn't have you read this bottom paragraph. Will you read
3 that for the jury so they hear the whole e-mail?

11:51 4 A. Yes, sir.

11:51 5 "We don't need anyone stirring up an already
6 overworked Ward with stuff that isn't of the utmost. Trust me,
7 and the cash will continue to flow. I never create doubt; so,
8 let's just stick to the plan. Thanks to all."

11:51 9 Q. What does it say after that?

11:51 10 A. "Thanks to all. And this is not a problem and requires no
11 explanation or reply."

11:51 12 Q. You dealt with Ward, didn't you?

11:52 13 A. I dealt with Ward. This e-mail was to David Smith. I'm
14 basically telling David I don't need him to send me a reply. I
15 just don't want him over there getting Ward all upset again.

11:52 16 Q. Do you think Ward would be upset if Mr. Smith came and told
17 him the hospital didn't have any hurricane coverage?

11:52 18 A. I think if Mr. Smith thought for a minute the hospital
19 didn't have coverage he would have gone to Mr. Cook.

11:52 20 Q. So, Mr. Smith didn't know; just you and Mr. Swetnam knew?

21 A. That's not what I am saying at all.

22 Q. You said if Mr. --

23 A. If I had known, I would have gone to Ward Cook. If I had
24 known, I would have gone to Mike.

25 Q. Did you ever ask Mike?

McConnell Cross of Carter

11:52 1 A. Sir, these people -- Mr. Reagan and Mr. Swetnam and
2 Mr. Smith had so much more infinite insurance knowledge than
3 me, I did not -- I did not ask them how they put the program
4 together on the technical side at all.

11:52 5 Q. But you had the relationship with the hospital, and they
6 trusted you?

7 A. That's correct.

8 Q. They trusted you, and you dealt with Ward. You didn't tell
9 him, and you knew there was a problem. Isn't that right?

11:53 10 A. No, sir. I did not know there was a problem.

11 Q. You just testified that Mr. Swetnam told you there was a
12 problem with the captives. Why --

13 A. But I didn't think there was a problem, ultimately, with
14 the coverage being in place.

11:53 15 Q. Why didn't you tell them? They trusted you.

16 A. That's not right, sir.

17 Q. What do you mean it's not right?

18 You testified that they trusted you. Why didn't
19 you tell them they purchased nothing with this \$936,000?

20 A. I did not know that they had purchased nothing.

21 Q. You knew there was a problem, and you didn't tell him.

22 MR. COLVIN: Your Honor, I object to that. It's just
23 argumentative. He's just arguing with the witness.

24 THE COURT: I'm going to allow the question, but let
25 him finish his answer.

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11:53 1 Go ahead please, Mr. Carter.

2 A. If I had known there was something wrong with the coverage,
3 that hadn't been corrected by Mr. Swetnam, I would have talked
4 to someone about it. I certainly did not know that there was
11:53 5 a -- you know, someone purported there was coverage when there
6 was none.

7 BY MR. McCONNELL:

8 Q. The cash continued to flow, though, didn't it?

9 A. (Indicating).

11:53 10 Q. You got paid?

11 A. I did get paid, yes, sir.

12 Q. You testified yesterday that Mr. Swetnam told you that
13 there was a meltdown. Do you recall that?

14 A. Yes, sir.

11:54 15 Q. Why didn't you tell Mr. Cook there was a meltdown?

16 A. When you have an account that is that complex and that
17 technical and when I don't know how to explain anything about
18 it, the bottom line is a guy like -- a guy with Mr. Swetnam's
19 qualifications goes in and his job is to fix that problem.
20 Things -- problems happen with accounts all the time, and the
21 technical side of the agency solves the problem.

22 Q. So, the bottom line, you -- what you are telling the jury
23 is you got \$1.2 million for just taking over some documents to
24 the hospital and playing golf with Mr. Springfield. You were
11:54 25 the relationship guy, and you didn't -- you know, if there was

McConnell Cross of Carter

11:54 1 a problem, if there was an issue, you left it to others to deal
2 with and you didn't ask any questions. Is that right?

11:55 3 A. You know that's not -- that's really not a bad
4 interpretation for a lot of what I did on that account that
5 they had had for 40 years, the agency had when I got there,
6 that Smith-Reagan had handled for over 20 years when I got
7 there.

8 And based on their reputations in the
9 community -- I absolutely did -- I completely deferred to them
11:55 10 on the technical side of that account and made no bones about
11 the fact that my relationship with the new, younger CEO allowed
12 Smith-Reagan to continue to handle the insurance for their
13 agency. I don't make any excuse about that.

14 I didn't determine what I was paid. I didn't
11:55 15 sign on any of their bank accounts, sir. And what they chose
16 to pay me, I took graciously and was proud to earn.

17 Q. You did sign the back of all those checks, didn't you?

18 A. Absolutely. That's how you put them in the bank.

19 Q. So, you did get paid for your work.

11:55 20 A. Yes, sir.

21 MR. McCONNELL: Your Honor, I think this is a good
22 place to stop.

23 THE COURT: All right. Ladies and gentlemen, just
24 come back whenever you wish. Enjoy your lunch.

11:56 25 (Jury not present)

McConnell Cross of Carter

11:56 1 THE COURT: Anything we need to take up?

2 MR. McCONNELL: No, your Honor.

3 THE COURT: Okay.

4 MR. McCONNELL: Your Honor, when would you like us to
11:56 5 be back?

6 THE COURT: I doubt they'll be back before 1:15. So
7 if you're back before then, that's time enough.

8 MR. McCONNELL: Thank you, your Honor.

9 (Recess was taken from 11:56 a.m. to 1:44 p.m.)

01:44 10 (Jury present)

11 THE COURT: Members of the jury, please be seated.

12 Do you want to resume your inquiry,

13 Mr. McConnell?

14 MR. McCONNELL: Yes, your Honor.

01:44 15 BY MR. McCONNELL:

16 Q. Mr. Carter, before lunch, we were talking about the curious
17 check and the hurricane policy. I'd like to talk now about the
18 Zurich policies.

19 A. Okay.

01:45 20 Q. You testified on direct that you tried to get the hospital
21 a good deal on insurance. Do you remember that?

22 A. That was the agency's role, yes, sir.

23 Q. So, did you feel like it was your job to get the best price
24 for the hospital?

01:45 25 A. As an agency, possibly, but not me individually.

McConnell Cross of Carter

01:45 1 Q. That was the agency's job, but you didn't feel that was
2 your job?

3 A. Well, it wasn't my role. I mean -- and I'm not being a
4 smart aleck. But our receptionist would want our agency to do
01:45 5 the best job, too; but she didn't deal with procurement of
6 coverage.

7 Q. Right. Your role was just dealing with Mr. Springfield?

8 A. And the day-to-day -- you heard Mr. Cook testify that
9 hundreds of documents and hundreds of other things were taken
01:46 10 over there. That's what I did on that particular account, yes,
11 sir.

12 Q. You were -- on the Zurich account, you were managing the --
13 kind of the flow of information?

14 A. Often, yes, sir.

01:46 15 Q. And you've seen the -- you also testified that you're aware
16 on the 2006 and 2007 policy and the 2007 and the 2008 policy,
17 the two policies that are at issue in this trial, that you were
18 aware that both of them had approximately a million dollar
19 markup?

01:46 20 A. Yes, sir.

21 Q. And you were aware that -- well, I shouldn't say you were
22 "aware."

23 And you received an equal share of that
24 million-dollar markup. Is that right?

01:46 25 A. As far as I know, yes, sir.

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01:46 1 Q. Well, I mean, you've seen all the cashier's checks; and
2 they all look pretty much the same?

3 A. Yes.

4 Q. And, so, the 2006-2007 policy, the one that came from
01:46 5 Zurich and -- and we've seen this a lot during the trial.

6 I'm going to show you Exhibit 2. You see this
7 \$1.4 million --

8 A. Premium.

9 Q. -- premium? And you never saw this document?

01:47 10 A. I did not, sir.

11 Q. And this one, also in 2006, listing the total premium of
12 \$2.3 million, also dated November 30th, 2006, you've never seen
13 that document?

14 A. No, sir. That's the document -- is this -- is this the
01:47 15 declarations page or the binder?

16 Q. This is the declarations page.

17 A. Yes, sir. I -- chances are -- this is for '06-'07?

18 Q. Yes.

19 A. Chances are I delivered that policy. I probably did see
01:47 20 it. That's certainly the premium I remember.

21 Q. Okay. So, you delivered this -- and I apologize for
22 mistaking your testimony.

23 So, you delivered this declaration page to the
24 hospital?

01:47 25 A. Yes, sir. I would have probably delivered the entire

McConnell Cross of Carter

01:47 1 policy that would have been behind this, as well.

2 Q. Okay. And you knew when you delivered this that this
3 policy had been marked up by a million dollars?

4 A. I knew the commission had been added to it of a million
01:48 5 dollars, yes, sir.

6 Q. Is that -- and I'm going to ask you kind of an obvious
7 question; but is that disclosed at all here, where it says
8 "Annual Premium Policy Fee, Surplus Line Tax and Stamping Fee"?

9 A. No, sir.

01:48 10 Q. Because your understanding was that that did not have to be
11 disclosed, the commission?

12 A. Yes, sir, and because the premium includes the commission
13 in this scenario.

14 Q. Okay. And you say it includes the premium from Zurich or
01:48 15 the premium as -- as, I guess, inserted by Smith-Reagan
16 includes that premium?

17 A. Well, the -- the total premium of \$2,380,638.42, part of
18 that -- in this case I happen to know it's roughly a million
19 dollars -- part of that 2 million and change is commission.

01:49 20 Q. And you testified on direct, I believe, that there were
21 discussions at Smith-Reagan about this million-dollar markup?

22 A. Yes, sir.

23 Q. Were you involved in these discussions at all?

24 A. Yes, sir.

01:49 25 Q. And -- because you were aware, in general, of kind of the

McConnell Cross of Carter

01:49 1 pricing information and what the prices are in the area. Is
2 that right?

3 A. Well, not in the area. But, I mean, as I testified, I
4 often would receive information. It might be something as
01:49 5 subtle as, from Mr. Springfield, you know, "Hey, Carter, your
6 boys better sharpen their pencil," or it might be something
7 more direct from Manny Vela that actually involved a number
8 that said, "You need to make sure your guys get it done for
9 less than X."

01:49 10 Q. You were actually able to get kind of inside information
11 from the hospital on what everyone else's bids are and take
12 that back to Smith-Reagan and tell them, "Look, you know, we're
13 close to the market," "We're outside the market," so that they
14 knew what the pricing should be. Is that fair?

01:50 15 A. Yes, sir, at times and --

16 Q. Okay. And, then, this Exhibit 2A, now, this is a
17 document -- and we've seen this before, and we know that's Ward
18 Cook's initials.

19 A. Yes, sir.

01:50 20 Q. And it's got the \$2.3 million premium here that we just saw
21 on Exhibit 4, and it's signed by Mr. Swetnam. Would you have
22 been the one to take this interim insurance binder to the
23 hospital?

24 A. I certainly may have, yes, sir.

01:50 25 Q. Okay. And it basically has the same information that --

McConnell Cross of Carter

01:50

1 A. I believe so.

2 Q. -- that's listed on this Exhibit 4.

3 And, so, your relationship in that sense kind of
4 paid off because -- or was valuable, I should say, because
01:50 5 Smith-Reagan was sort of able to adjust their pricing based on,
6 you know, what your competitors might be pricing their policies
7 at?

8 A. Yes, sir.

9 Q. And, so, we had 1.4 million for Exhibit 2 and then 2.3 for
01:51 10 Exhibit 4.

11 And then, if we go to Exhibit 8, this is the next
12 year, right?

13 A. Yes, sir.

14 Q. 2006-2007.

01:51 15 Well, the first page is not here.

16 But 8A, this is, again, a document you would not
17 have seen, correct?

18 A. That is correct.

19 Q. And -- because this is the original. And this lists the
01:51 20 \$1.2 million; and it's signed by Mr. Hamlin, Gregory Hamlin,
21 November 28, 2007.

22 A. And that is -- that's the dec page, is it? I just can't
23 see the top of it.

24 Q. Yes, it is.

01:51 25 A. Yes, sir. You know, I saw that when it was produced in the

McConnell Cross of Carter

01:51 1 civil lawsuit.

2 Q. So, were the folks at Smith-Reagan, Mr. Smith and
3 Mr. Reagan, I mean, were they generally happy that you were
4 able to get this information?

01:52 5 A. I believe so. They paid me handsomely.

6 Q. Wasn't that information critical to figuring out how much
7 you could change this premium and how much you could charge the
8 hospital?

9 A. I mean, there's no doubt it was valuable. I was -- yes. I
01:52 10 mean, it was valuable. They wanted to know -- and, again, to
11 put it into a simpler term, if -- if I can, if I'm looking to
12 buy a Buick and I come to you and say, "I've got a quote on a
13 Buick. It's \$30,000. I'll buy it from you if you can get it
14 for less," then you know if you can afford to get it for less
01:52 15 or not.

16 If I say, "Okay. I -- you know, I'll buy it for
17 28 from you," I still save \$2,000 versus the other guy, no
18 matter what the guy that sold it for 28 sold it for [sic].

19 That's --

01:53 20 Q. Now, in your hypothetical, you would agree, however, that
21 it's a little bit different if you're selling, let's say -- go
22 back to your hypothetical -- if you're selling a car to someone
23 and you lie to the person about the price they're paying.
24 Would you agree that's different?

01:53 25 A. Well, no. If I lied about the price I paid for it to sell

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01:53

1 it to you?

01:53

2 Q. No. No. Not -- irrespective of what you paid, would you
3 agree that it's different -- based on your hypothetical that
4 you just gave this jury, it's different when you lie about the
5 price that the customer is paying, regardless of what you paid?

01:53

6 A. I guess any time you lie about the price the customer
7 pays -- but I just give you a hypothetical -- two options, one
8 is 30 and one is 28. You buy the one that's 28, that -- that
9 was the price, 28.

01:53

10 Q. I know. I changed it up a little bit. I'm asking you if
11 it's just a little different.

12 A. I'm just trying to clarify. I'm sorry. I don't understand
13 the question.

14 Q. The question is, is that different. Is changing the price
01:54 15 that the customer is paying, is that different than not telling
16 the customer what you're paying?

17 A. I'm sorry. I just don't understand. Is that different --

18 Q. Well, how is that confusing?

19 A. If I change the price that I'm paying --

01:54 20 Q. Let's say you go up -- you're signing a document to buy a
21 Buick, under your scenario, and the customer thinks the price
22 is \$10 -- or let's -- in your scenario, \$20,000 and let's say
23 you change it to \$30,000. Is that the same as not telling the
24 customer what you paid for the car?

25 A. Well, I can see that being different; but that's not in any

McConnell Cross of Carter

01:54 1 way indicative of the scenario that I gave. So --

2 Q. I'm just expanding on your hypothetical.

3 A. I'm just not really certain how to answer.

4 Q. Is that the same thing as doctoring up the sticker price?

01:55 5 Your hypothetical? Is that different from your hypothetical?

6 A. (No response).

7 Q. Let's say you go up to -- you know, someone goes -- you

8 know, all cars have a window sticker on the car, right?

9 A. Right.

01:55 10 Q. And it lists out, you know, what you are paying for the

11 car. And, you know, sometimes customers have, you know, what

12 the dealer paid for the car; but that's not usually on the

13 sticker price, right?

14 A. Okay.

01:55 15 Q. Is that your understanding?

16 A. Yes, sir.

17 Q. So, is it different for someone to change the numbers on

18 the sticker price, is that different than just not telling them

19 what the dealer paid for the car?

01:55 20 A. Not as -- in my opinion, no, not as long as I show you --

21 well, let's say the car was 30 and I mark it to 32.5 and I tell

22 you that I'll sell it to you for 32.5, as long as your

23 independent research tells you that 32.5 is still a good deal,

24 I don't see the problem.

01:56 25 Q. But if you're changing a sticker price, you're changing a

McConnell Cross of Carter

01:56 1 document, a manufacturer document. That's not your document.

2 A. Mr. McConnell, that -- unfortunately, for our scenario,

3 that happens all the time, sir. On cars, absolutely.

4 Q. The car dealers alter documents?

01:56 5 A. Car dealers often sell a car for more than the sticker

6 price, depending on supply and demand.

7 Q. Sure, they do; but they don't alter documents, do they?

8 A. I don't know, sir. I'm not a car --

9 Q. Do they lie to their customers?

01:56 10 A. I think a lot of us would probably think car dealers lie.

11 Car dealers might, yes, sir.

12 But -- and I'm sorry. I wasn't trying to be

13 smart. I was just -- I shouldn't have brought up the analogy,

14 and I apologize.

01:56 15 Q. Right. Okay. So, going back to your analogy -- or do you

16 not want to talk about the analogy anymore?

17 A. Talk about anything you would like to, sir.

18 Q. Okay. What I was trying to distinguish was between

19 disclosing what you paid for an item, whether it's a car,

01:57 20 whether it's a chair, whether it's a computer, versus

21 affirmatively changing something that you're -- a

22 representation you're making to a customer. Do you understand

23 the difference between that?

24 A. (No response).

01:57 25 Q. Do you understand the difference between me not telling you

McConnell Cross of Carter

01:57 1 something and me telling you something that's false?

2 A. Oh, okay. Yes, sir. You can bring that back to Zurich if
3 you like.

4 Q. That's what I am trying to get at.

01:57 5 A. I can follow you on that.

6 Q. That's what I am trying to get at.

7 A. Sure.

8 Q. Okay. That was my point.

9 Okay. So, in Exhibit 7A -- 7A, this is the
01:58 10 2.5 million. And this is -- if we had the first page of
11 Exhibit 8 -- is that accurate -- this would be what the premium
12 is on Exhibit 8.

13 A. And that's the binder?

14 Q. This is the -- yes, this is the document that went to the
01:58 15 hospital.

16 A. And you say the dec page matches that?

17 Q. Right.

18 A. Okay. Yes, sir. I'm fine with that.

19 Q. Would this be a document that you would have taken to the
01:58 20 hospital?

21 A. I don't -- it is the type of document I would have taken.
22 I do not believe I took this document in '07.

23 Q. Okay. But the one in '06, are you sure you took this one?

24 A. Yes, sir, I'm fairly well sure I did take that one. I'm
01:58 25 certainly not denying I took that one.

McConnell Cross of Carter

01:58 1 Q. Why would you think you didn't take the one in
2 October 2007?

3 A. After I was relieved of my duties in the middle of '07, I
4 didn't spend a whole lot of time at the facility. I did repair
01:58 5 my relationship with Mr. Springfield. I did, you know, do a
6 lot of things for the individuals that I worked with at the
7 hospital, but I didn't spend a lot of time on the account.

8 Q. So, the premium -- according to these documents we looked
9 at, the premium for Zurich from 2006 to 2007 was \$1.4 million;
01:59 10 and 2007 to 2008 -- we had a first page of Exhibit 8 -- you'll
11 see it's \$1.2 million. That's a savings of \$200,000.

12 A. Are you talking about the originals that --

13 Q. Yes, the originals, the unaltered.

14 A. Okay. That's --

01:59 15 Q. Okay. And, then, the documents that we saw were presented
16 to the hospital, for Exhibit 4 it's \$2.3 million; and, then,
17 Exhibit 8B we looked at, that's \$2.5 million, right?

18 A. I'll take your word for that.

19 Q. So, the original document, the original -- according to the
01:59 20 original Zurich policies, the hospital would have saved
21 \$200,000 between 2006-2007, 2007-2008. But with the documents
22 that included the commission, they actually paid what?
23 \$200,000 more between years and I guess the spread would have
24 been 400,000. Do you follow me?

02:00 25 A. I guess. Except -- I mean, I do follow the math you just

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02:00 1 used. But I never saw the original; so, I had no idea of
2 the -- I mean, I didn't have -- I guess the bigger point is
3 there was more spread in '07-'08 than there was in '06-'07
4 and --

02:00 5 Q. And who got the savings on those policies?

6 A. I mean, I would have to compare it to the market, as it was
7 advised to me, for each year, from the competition.

8 Q. Well, the hospital -- the original policy in '06 and '07
9 was \$200,000 less than '07 and '08.

02:00 10 A. Yes, sir.

11 Q. And, then, the hospital was charged \$200,000 more those
12 years. We said the spread is \$400,000. Where did that go?

13 A. Well, it would have -- I mean --

14 Q. It went to Smith-Reagan, wouldn't it?

02:01 15 A. It would have gone to the agency, yes, sir.

16 Q. Okay. And do you recall Mr. Swetnam's deposition, where he
17 talked about changes in these policies and managing general
18 agent? Do you recall how he described these changes to the
19 policies?

02:01 20 A. He described it as "correcting" the policy.

21 Q. "Correcting." But you described it a little differently.
22 Do you remember that? Yesterday.

23 A. I don't.

24 Q. You used the term "manuscripting"?

02:01 25 A. Oh, no. I was talking about something different. But it's

McConnell Cross of Carter

02:01 1 okay. If you want to explore it, I'll talk to you about it.

2 Q. What is "manuscripting"?

3 A. "Manuscripting," as I understand it, is you got -- this
4 particular hospital, they had a number of underlying
02:01 5 liabilities, like -- and I'm not going to be specific because I
6 actually don't know specifically.

7 But let's say their auto policy that covered the
8 automobiles the hospital had, let's say they had a \$5 million
9 limit of liability on their auto policy. And maybe they had
02:02 10 a -- on their med mal they had a \$5 million trust and another
11 15 on top of that; and on general liability, they had the same.
12 But they also had, like, a hired/not owned aircraft policy.
13 And it, I believe, only had, like, a \$5 million limit.

14 The policy that Mike manuscripted, as I
02:02 15 understand, and the reason that he went directly from the
16 office in San Benito to New York is so that Zurich would --
17 their umbrella would drop down to each attachment point.
18 Instead of everything having to be a million dollars and the
19 umbrella was excess of a million, it might literally be
02:02 20 30 million excess of 5 on auto, 30 million excess of one on
21 general liability, 30 million excess of 15 on a trust. It kind
22 of dropped down to where it needed to be.

23 And as I understand it, that's -- that was one of
24 the advantages that Swetnam Insurance Services could provide,
02:03 25 is attachment points that met all their underlying coverage.

McConnell Cross of Carter

02:03 1 And that was, in theory, one of the reasons they were more
2 competitive. But I --

3 Q. You did a very good job explaining that.

4 A. Well, I -- you know, I listened to it; but I don't -- I
02:03 5 don't know that I'm correct. I'm glad you understood it, but
6 I'm not sure I'm correct. That's as I understand it.

7 Q. I mean, is that -- "manuscripting" is that -- is that an
8 insurance term?

9 A. It's -- that's how Mr. Smith explained it to me.

02:03 10 Q. Mr. Smith explained "manuscripting"?

11 A. Yes, sir.

12 Q. I mean, is it a real word or --

13 A. I really don't know. I mean, you -- I don't know. That's
14 what it was described to -- to me.

02:03 15 Q. When you're doing that kind of changing to a policy, do you
16 use a program like Adobe Acrobat so you can go in and make
17 changes to the document?

18 A. I don't know how to do that.

19 Q. Do you know if you can do that with Adobe Acrobat?

02:04 20 A. I have no idea.

21 Q. Have you ever used Adobe Acrobat?

22 A. I don't know.

23 Q. You don't -- like, you've never used an Adobe Acrobat file?

24 A. Well, I --

02:04 25 Q. A .pdf?

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02:04 1 A. Yes, I --

2 Q. You open up a .pdf, Adobe Acrobat is the program that opens
3 that.

4 A. Okay.

02:04 5 Q. You weren't aware that you could go in and change .pdf's
6 with the editing equipment?

7 A. I'm sure I had it; but, I mean, as pertains to these
8 policies, I didn't have anything to do with that.

9 Q. You weren't aware that you could do that?

02:04 10 A. No, sir.

11 Q. And if it was done, you didn't have anything to do with it?

12 A. No, sir.

13 Q. Okay. And we talked about, at the beginning of your
14 testimony, the insurance test that you took. Do you remember
02:04 15 that?

16 A. Yes, sir.

17 Q. And you said that you had roughly nine years of experience
18 in the insurance field before 2004, before you went to work for
19 Smith-Reagan?

02:05 20 A. Yes, sir.

21 Q. Do you remember testifying to that?

22 Do these tests teach you anything in terms of --
23 do they teach you anything about omissions and
24 misrepresentations?

02:05 25 A. I mean, not -- I don't recall any specific question. I'm

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02:05 1 certain that there's ethics type questions on the exam.

2 Q. What sorts of ethics type questions?

3 A. I couldn't tell you. It was years ago and it -- I remember
4 it wasn't very in-depth.

02:05 5 Q. Do those tests tell you that it's okay to change a document
6 just because you don't have to disclose something?

7 A. Sir, I took the general agent's test. I didn't take an MGA
8 test or a surplus lines test, and I didn't have to deal with
9 any of those issues.

02:05 10 Q. I'm just asking as a general matter.

11 A. No, as a general agent, there was nothing on there that
12 explained to me anything about altering or changing and
13 correcting policies.

14 Q. Do they teach you generally, as insurance agents, that
02:06 15 you're not supposed to alter documents presented to your
16 customers?

17 A. Yes, sir.

18 Q. And you know that as an insurance agent that you're not
19 supposed to do that?

02:06 20 A. Not only that, but I know that I never did.

21 Q. Well, I'm not -- that's not my question.

22 A. Okay.

23 Q. Thank you for the answer.

24 A. I'm sorry.

02:06 25 Q. You know that that's unlawful, that it's illegal to do

McConnell Cross of Carter

02:06 1 that?

2 A. I can't speak to that.

3 Q. You can't speak to whether it's illegal?

4 A. No, sir.

02:06 5 Q. But the test that you took for insurance and the knowledge

6 you have as an insurance agent tells you that you're not

7 supposed to do that?

8 A. Yes, sir.

9 Q. What about selling insurance that doesn't exist; what does

02:06 10 the test tell you about that?

11 A. Well, the test didn't address it; but I'm certain that's

12 not legal.

13 Q. Does the insurance code make it okay to lie to clients?

14 A. I've never read the insurance code, but I'm certain it does

02:07 15 not.

16 Q. Does it teach you that a misrepresentation is a lie?

17 A. The insurance code?

18 Q. The training that you had and your experience as an

19 insurance agent, do you know that making a misrepresentation to

02:07 20 someone is lying to them?

21 A. No, sir. I think common sense does that.

22 Q. So, common sense -- so, you wouldn't even need your

23 experience to know you can't just change a document and have it

24 be something that's truthful?

02:07 25 A. No, sir. I said that -- that misrepresenting something to

McConnell Cross of Carter

02:07

1 someone is a lie.

2 Q. Is changing a document making a misrepresentation?

3 A. It depends on what your qualifications are to change that
4 document or alter it or correct it or whatever the proper term
5 for the event is.

6 Q. So you can get a license to steal. Is that what you are
7 saying?

8 THE COURT: Okay. All right. Let's move on.

9 BY MR. McCONNELL:

02:08 10 Q. And you didn't go to New York with Mr. Swetnam?

11 A. No, sir.

12 Q. Do you know how much time was spent altering these
13 policies?

14 A. No, sir. In fact, I -- I always -- the documents that I
02:08 15 saw, again, as I testified, the binder matched the invoice,
16 which matched the policy that I delivered. I understood that
17 they came from Zurich that way. I was under the impression
18 that Zurich knew everything that was happening on the account.

19 Q. Did you ever tell Mr. Springfield about these undisclosed
02:08 20 commissions?

21 A. No, sir.

22 Q. He was your friend. Never talked about that sort of thing?

23 A. No, sir.

24 Q. Do you ever tell Mr. Vela about the undisclosed
02:08 25 commissions?

McConnell Cross of Carter

02:08 1 A. No, sir. I would have been fired for that.

2 Q. Who would have fired you?

3 A. Mr. Smith.

4 Q. Earlier today, before we broke for lunch, you said that you
02:09 5 couldn't tie particular policies to particular checks. Do you
6 remember testifying to that?

7 A. To a degree, that's true. I mean, there's -- when you get
8 a \$250,000 check on an account that you know had a million
9 dollars' worth of commission in it, I mean, you -- it doesn't
02:09 10 take, you know, a lot of thought to know that. But there -- as
11 Mr. Cook testified, there's 10, 15 -- all these policies that
12 Smith-Reagan wrote. And there were some random checks I got
13 that I have no idea what policy or group of policies they were
14 attached to.

02:09 15 Q. I haven't seen any other \$250,000 checks. Was there
16 another \$250,000 check --

17 A. Not to my knowledge.

18 Q. -- that we haven't talked about in the trial?

19 A. No.

02:09 20 Q. But with the Swetnam checks, with the checks that you got
21 from Mr. Swetnam, from Swetnam Insurance, you at least knew
22 that they had something to do with the types of policies that
23 he dealt with, correct?

24 A. Yes, sir.

02:09 25 Q. Okay. Thank you for that clarification.

McConnell Cross of Carter

02:10 1 And you said that you discussed commissions on
2 the Zurich policies at Smith-Reagan?

3 A. Yes, sir.

4 Q. And did you say they were discussed in the kitchen or
02:10 5 something, at the office?

6 A. Well, there was a -- it was a small office, and there was
7 a -- like, a kitchenette thing and a refrigerator and a
8 conference table and a, you know, white grease board, if you're
9 referring to my conversation with Mr. Smith.

02:10 10 Q. How were they discussed in this kitchen? I mean, was it
11 kind of -- did you say, "Hey, look, you know, this is how much
12 I think we can charge," and, you know, they figured out how
13 much they could add onto the policy?

14 What was the context of the conversation?

02:10 15 A. Well, they would -- we had a Monday morning meeting every
16 Monday; and we traded, you know, information, ideas. That's
17 where conversations were held that said, you know, "Our
18 official word should be the market is tight. Don't go talk
19 about the coverage. By the way, these are the quotes that I've
02:11 20 been getting. I'm going to be out of town next week. I'm
21 going to New York," or whatever about that specific account.

22 But we also talked about all the other agency
23 business that we were involved in. So, it wasn't a -- it
24 wasn't just a Valley Baptist Medical Center agency.

02:11 25 Q. Okay. And you testified that you were trying to get the

McConnell Cross of Carter

02:11 1 best deal -- well, the Smith-Reagan agency was trying to get
2 the best deal for Valley Baptist?

3 A. Yes, sir.

4 Q. And you helped them do that by telling them, you know, what
02:11 5 kind of the market was and what other folks were submitting
6 bids for?

7 A. Any -- any information that I could get through my
8 relationships, I forwarded on to the principals at
9 Smith-Reagan, yes, sir.

02:11 10 Q. Why would you hide commissions and be secretive if you're
11 trying to get the best deal?

12 A. I didn't hide anything, and I don't think I was secretive.
13 I mean, it's a retail business and --

14 Q. You didn't hide anything?

02:12 15 MR. CLARK: Excuse me. I object.

16 THE COURT: Yeah. Let's let him finish.

17 MR. CLARK: Interrupting the witness.

18 A. I'm just -- I'll just avoid an analogy. I don't think it's
19 secretive or hiding anything. If -- if this price is presented
02:12 20 and was approved by Zurich and it's the best deal according to
21 Valley Baptist at the time they make the purchase, how much --
22 whether one -- if the other policy was a higher premium,
23 then -- then this is the best deal for the hospital.

24 BY MR. McCONNELL:

02:12 25 Q. How is this not hiding the commission? Where is it listed

McConnell Cross of Carter

02:12 1 in this document that went to the hospital?

2 A. Well, there is -- there's no mention of commission there.

3 There's a fee that I don't know where it went, and I don't know

4 where -- well, the taxes went to Texas; and the stamping office

02:12 5 fee went to Texas.

6 Like I said, this is the only document I ever

7 saw. So --

8 Q. And this fee here, this \$81,000, this would be an

9 additional fee that Smith-Reagan got?

02:13 10 A. I have no idea what that -- I know it was something that

11 was on about every surplus lines policy I ever saw.

12 Q. Were you aware in Mr. Swetnam's deposition he talked about

13 this fee, you know, paying office expenses, overhead, omissions

14 and liability insurance?

02:13 15 A. It may have. It wasn't something that was ever accounted

16 for to me; and as far as I know, I never got a dime of it.

17 Q. All you got was your \$250,000?

18 A. Yes, sir.

19 Q. And what exactly did you do to earn that \$250,000?

02:13 20 A. Well, one thing, besides having the relationship that

21 allowed the agency to continue pulling in the business, one

22 thing to think of is that, you know, in our business you can

23 transfer an account from one agent to another with an agent of

24 record letter. You heard Ms. Lewis talking about coming in and

02:13 25 receiving an agent of record letter to move the business to

McConnell Cross of Carter

02:13

1 Alliant.

02:14

2 In practical application, I could have gone to
3 work for Bob Shepard at Shepard Walton King and, with the
4 simple agent of record letter that is about two lines long, I
5 could have moved this business to Shepard Walton King.

02:14

6 Q. Why would it move with you? Why wouldn't it stay with
7 Smith-Reagan?

8 A. Because I was the one with the relationship, and that's
9 part of what Smith-Reagan paid for.

02:14

10 Q. Wasn't that relationship built on lies?

11 A. No, sir, not at all. My friendship with Mr. Springfield
12 was absolutely genuine, and I truly believed he was getting the
13 best deal on his coverage right there.

02:14

14 Q. You believe that the Smith-Reagan agency getting more than
15 Zurich was the best deal for the hospital?

02:14

16 A. I believe it was a better deal than they were getting from
17 any of their competitors.

02:14

18 Q. How were they supposed to know what the best deal is if
19 you're not telling them all the -- all the money that you're
20 receiving in this deal?

02:14

21 A. I -- number one, it wasn't my role to do so; number two, I
22 don't believe that a retail agent has that obligation in the
23 State of Texas.

02:15

24 Q. How do they know it's the best deal if they think their
25 premium is \$2.1 million when it's actually a million dollars

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02:15

1 less?

2 A. I mean, I think I've answered your question. I don't
3 really know how to continue to belabor it.4 Q. I don't think you have answered my question. How does the
02:15 5 hospital --6 MR. COLVIN: Your Honor, I'm going to object. The
7 question has been asked and answered four or five times. He
8 just didn't like the answer.9 THE COURT: There's nothing in the Rules of Evidence
02:15 10 that prevent the question being asked more than once. We're on
11 the verge of being cumulative under Rule 611, but I'll allow a
12 little bit more inquiry.13 MR. CLARK: Judge, I'm going to object. This line is
14 cumulative. It's been three or four times now; and just for
02:15 15 the record, it's cumulative.16 THE COURT: Your objection is noted for the record.
17 It is overruled for now, but we're not going to linger on this
18 point much longer.

19 BY MR. McCONNELL:

20 Q. Wouldn't that \$1.2 million policy have been the best deal
21 for the hospital?22 A. Well, if an agency can stay in business selling everything
23 at cost, then absolutely I agree that would be --

24 Q. Cost? You were getting 10 percent.

02:15 25 A. Well, number one, I didn't know anything about the

McConnell Cross of Carter

02:15 1 10 percent; and the 10 percent went to Swetnam Insurance
2 Services, not to me, sir.

3 Q. Well, that wasn't my question. You said, "If the agency
4 was selling something at cost, I don't know how they could stay
5 in business."

6 And I said, you know, the \$1.2 million, the --
7 Smith-Reagan was still getting 10 percent out of that policy --

8 A. Technically Swetnam Insurance Services got the 10 percent.

9 Q. Okay. They were getting 10 percent?

02:16 10 A. Right.

11 Q. Wouldn't that have been the best deal, for the hospital to
12 just pay the 10 percent as opposed to a hundred and ten
13 percent?

14 A. Using that logic, they could have received the 10 percent
02:16 15 commission and donated it back to the hospital and made it an
16 even better deal; but they can't pay the bills that way.

17 THE COURT: Okay. All right. Well, that's fine.

18 Let's move on.

19 BY MR. McCONNELL:

02:16 20 Q. Do you remember Mr. Colvin going over your tax returns?

21 A. Yes, sir.

22 Q. And he talked about for 2005 your total income was 193,000?

23 A. Okay. Yes, sir.

24 Q. And, then, for '06, the total income was 745,000?

02:17 25 A. Yes, sir.

McConnell Cross of Carter

02:17 1 Q. And, then, in '07, 665,000?

2 A. Yes, sir.

3 Q. And in '08, 75,000?

4 A. Okay.

02:17 5 Q. And, so, all you had to do -- and we talked about before
6 lunch that you got \$1.2 million from September 2006 to
7 September of 2007. So, all you had to do to get this
8 \$1.2 million was have this relationship with Mr. Springfield
9 and give this information about, you know, what the market was
02:17 10 and what everyone else was bidding on back to Smith-Reagan.

11 A. And service the account and do the delivery work that I did
12 and -- and -- I mean, it is -- you've simplified it greatly;
13 but, for the most part, my relationship is what I was paid for,
14 yes, sir.

02:18 15 Q. I would like to go through some of the e-mails that
16 Mr. Colvin showed you. And he showed you this e-mail, which is
17 Government's 11-11A, August 28th, 2007. Do you remember this
18 e-mail?

19 A. Yes, sir.

02:18 20 Q. So, at the time this e-mail was sent, you would have
21 received the \$425,000 for the first windstorm policy Ariel RE,
22 right? You got that money in '06?

23 A. In '06, yes, sir.

24 Q. Then you got \$250,000 for the first Zurich policy, right?

02:18 25 A. Yes, sir.

McConnell Cross of Carter

02:18 1 Q. 274 for the second one. Is that right?

2 A. Oh, in June?

3 Q. Yeah.

4 A. Okay.

02:18 5 Q. For the second windstorm policy?

6 A. Yes, sir.

7 Q. It was 274, 294, somewhere around there?

8 A. One of those.

9 Q. So, close to a million dollars.

02:19 10 Okay. Is that -- is that fair?

11 A. Fair enough.

12 Q. And then you were discussing -- you told Mr. Colvin that --
13 you know, what you were discussing in this e-mail. And what
14 did you say it was, in general?

02:19 15 A. (No response).

16 Q. That the e-mail -- that the discussion above -- I guess
17 below "gents." You talked about how you met with Ward Cook and
18 David Smith --

19 A. Right.

02:19 20 Q. -- and you -- and I guess Mr. Springfield, who was "the big
21 guy," wanted to get a better deal. Is that the gist of what
22 this is saying?

23 A. No, sir. This is talking about the limit of insurance, I
24 believe. These are notes that I -- this is -- the notes here
02:19 25 are for Mr. Smith, and I put those into one side of this e-mail

McConnell Cross of Carter

02:19

1 and for Mr. Swetnam into the other.

02:20

2 They're talking about the limit of the umbrella
3 coverage over the trust, is it going to be a \$10 million trust,
4 a \$15 million trust. And Mr. Cook said 20 million in the trust
5 is too high.

02:20

6 Q. And, then, what do you say here in the bottom? "In
7 summary"?

8 A. "In summary, this business is leaving as soon as they can
9 move it. I suggest all commissions and fees be fully earned
10 and we plan on losing it next renewal. That does two things.
11 It allows us to plan for the future and removes any guilt about
12 this year's income."

02:20

13 Q. And, so, you had one more check to go to hit that
14 1.2 million bucks in September, right?

02:20

15 A. Are you assuming that was a goal or --

16 Q. No. I'm asking you. One more check to go until you hit
17 \$1.2 million?

02:20

18 A. I received one more large check on this account, yes, sir.

02:20

19 Q. Okay. And that was in September.

02:20

20 A. Okay.

02:20

21 Q. What does it say about "legacy issues"?

02:20

22 A. Oh, that's -- I said, "Don't focus on any legacy issues.
23 Focus on" --

02:20

24 THE COURT: No. You're going too fast.

02:20

25 THE WITNESS: Oh, I'm sorry, sir.

McConnell Cross of Carter

02:20 1 A. "Don't focus on any legacy issues. Focus on my mortgage."
2 That was in reference to Mr. Smith talking about,
3 you know, "What if we drop the bottom out of it; you know,
4 would we be able to keep the business?"

02:21 5 And I advised him no, and history shows that I
6 was correct.

7 BY MR. McCONNELL:

8 Q. What does "drop the bottom out of it" mean?

02:21 9 A. If he were to drop the spread significantly and sell it for
10 less money, would it allow them to have some type of a
11 long-term relationship. And I was telling him that, no, the
12 pricing wasn't going to affect the relationship, that the
13 business was going to move.

14 Q. Is that because you thought the hospital would find out
02:21 15 about these fake hurricane policies?

16 A. No, sir. The contrary. Mr. Springfield was encouraging me
17 to go to work for Alliant at the time.

18 Q. Why would you have any guilt about that income?

19 A. I wouldn't have any guilt about it. David was saying,
02:21 20 "Gee, that's a lot of spread."

21 I said, "It's still cheaper than what they're
22 getting and" -- that was the indication I had from Alliant.

23 In fact, Mr. Vela testified that -- or Ms. Lewis
24 testified that she told Mr. Vela, "I think they're about a
02:22 25 hundred thousand dollars high."

McConnell Cross of Carter

02:22 1 And as I recall, the premium was adjusted
2 downward, the deductible was lowered, and then we sponsored a
3 key event at the hospital.

4 Q. I thought Mr. Smith said the spread was okay.

02:22 5 A. What do you mean?

6 Q. The spread -- you just said the spread -- Mr. Smith was
7 concerned about the spread?

8 A. Well, Mr. Smith set the spread.

9 Q. He set the spread?

02:22 10 A. He's the decision-maker on the account. I just gave him my
11 input.

12 Q. And what was your input?

13 A. My input was, "Sell it at sticker price because you're not
14 going to -- you know, you're not going to get their business
02:22 15 long term by dropping the price."

16 Q. I notice you had a -- you found a pretty calm demeanor here
17 in court today.

18 A. Yes, sir. You've been very nice.

19 Q. Some of these e-mails suggest you may have a different
02:23 20 demeanor at times.

21 A. I like to think I've outgrown it, but I understand your
22 point.

23 Q. And you weren't under indictment when you wrote those
24 e-mails, were you?

02:23 25 A. No, sir.

McConnell Cross of Carter

02:23

1 Q. You weren't on trial.

2 A. I was -- I was a little more prideful.

3 Q. In this -- in the e-mail that we've seen, talking about the
4 golden goose --

02:23 5 A. Yes, sir.

6 Q. -- do you remember that one?

7 A. Yes, sir.

8 Q. Who's the golden goose? Is that you or the hospital?

9 A. I was the golden goose.

02:24 10 Q. You were the golden goose?

11 A. Yes, sir. That's in response to a comment from the Monday
12 morning meeting.

13 Q. Do you remember your attorneys getting up here and asking
14 each witness whether your name was in certain documents?

02:24 15 A. Yes, sir.

16 Q. Your name is on all those checks that you got, isn't it?

17 A. Yes, sir.

18 Q. Do you remember what Mr. Vela said his salary was?

19 A. I think he said 300,000 and the most he made was four.

02:24 20 Q. And, so -- and he's a lawyer, the head of the hospital's
21 legal department, correct?

22 So, in one year, you made four times his salary.

23 A. That's -- I mean, by your logic, Mr. Vela would have made
24 six or eight hundred thousand.

02:24 25 You've added two years of my income that you

McConnell Cross of Carter

02:24 1 grouped into one calendar year -- or one fiscal year.

2 Q. Really?

3 A. Yes.

4 Q. I don't think so. How does that math work?

02:25 5 A. If I made \$475,000 in --

6 Q. No. I'm talking about from September 2006 to September of

7 2007.

8 A. Well, he was on salary and I was on commission. I mean,

9 it's -- when you get paid is the difference. He made -- I got

02:25 10 paid that amount in two years --

11 Q. Let's talk about those commissions.

12 THE COURT: Just a second. Let him --

13 Go ahead and finish your answer.

14 A. He would have gotten his salary for two years, '06 and '07.

02:25 15 I got the commissions for '06 and '07.

16 And, Mr. McConnell, I mean, I'm not an attorney.

17 It's, like, I don't compare my salary to a car dealer. I never

18 knew what Mr. Vela made. I had no input in his income, and I

19 have no idea what he earned or how it relates to the insurance

02:25 20 business at the hospital.

21 BY MR. McCONNELL:

22 Q. And at what point did you realize during the course of

23 Mr. Boyden's investigation in the civil case and this criminal

24 trial that those hurricane policies, that money was never

02:26 25 purchased with that -- insurance was never purchased with that

McConnell Cross of Carter

02:26 1 money?

2 A. I guess I knew insurance was never purchased when I saw the
3 guaranty in the civil suit.

4 Q. In the civil suit?

02:26 5 A. Yes, sir.

6 Q. Did you ever try to pay back the money you got from the
7 hospital, from those hurricane policies?

8 A. No, sir. And I've explained this to Mr. Hanslik in the
9 civil suit, as well. The income I received, I received from
02:26 10 the agency that I worked for. And I told them specifically, it
11 may be that Smith-Reagan made decisions that affected you as a
12 hospital and, even though you've already accepted monies back
13 from Smith-Reagan, they may actually owe you more. But I said,
14 "I never took a dime from Valley Baptist. I took my income
02:27 15 from Smith-Reagan and Swetnam Insurance Services."

16 Q. Why did Mr. Smith pay his money back?

17 A. I can't speak for Mr. Smith, sir.

18 Q. What about Mr. Reagan?

19 A. I wouldn't try to speak for Mr. Reagan.

02:27 20 Q. Did you ever apologize to Mr. Springfield?

21 A. No, sir.

22 Q. What about Mr. Cook?

23 A. No, sir.

24 Q. The hospital?

02:27 25 A. No, sir.

McConnell Cross of Carter

02:27 1 Q. Knowing right now, today, if you knew what you know right
2 now, today, at the time these policies were passed to Mr. Cook,
3 would you have gone through with taking this money?

4 A. Knowing what I know today?

02:27 5 Q. Yes.

6 A. I don't believe so.

7 Q. Do you remember your attorneys during the trial asking
8 about the e-mails?

9 A. Yes, sir.

02:27 10 Q. And those e-mails were all to your e-mail address, the
11 e-mails in Government's Exhibit 11, that you said you had gone
12 through several times?

13 A. I don't know. I mean, I -- I think they were from my
14 e-mail address. I don't know if they were -- you know, I mean,
02:28 15 like I sent them?

16 Q. No, no, no. Is that your e-mail address that's listed on
17 those e-mails?

18 A. There's -- yes, sir. I mean, I think.

19 Q. Do you think it's possible to reply to an e-mail twice?

02:28 20 A. I guess -- I guess it could be possible. I don't --

21 Q. Is it -- is it possible, when you reply to e-mails more
22 than once, that the signature block will appear at the bottom
23 of an e-mail more than once? Have you ever seen that happen?

24 A. Not without something being redacted. I mean, I don't -- I
02:28 25 don't believe -- something had to be missing somewhere for that

McConnell Cross of Carter

02:28

1 to happen.

2 Q. That signature block at the bottom of your e-mail, does
3 that come up when you hit "Compose New Message," when you write
4 an e-mail -- e-mail, automatically?

02:28 5 A. (Indicating).

6 Q. So, each time, you sit there and type out "Brent A.
7 Carter," your address, your phone number --

8 A. Oh, yeah. I don't type it out, no, sir.

9 Q. That's something that automatically pops on there?

02:29 10 A. Sure.

11 Q. So, it's possible, with Government's Exhibit 11, that the
12 three blocks where e-mail appears three times, that's just
13 because you were replying to e-mails or an e-mail was
14 forwarded; that doesn't necessarily mean that the document was
02:29 15 tampered with, correct?

16 A. I'll even -- I don't believe necessarily the documents were
17 tampered with, and I've certainly never -- I never suggested
18 they were done so by your office.

19 But it is worth noting that those documents went
02:29 20 from Smith-Reagan to someone, to a TDI guy, to a -- to
21 Mr. Boyden's office. And somewhere along the way, significant
22 pieces of a lot of them were left out, many of the gaps of
23 which I've filled in and --

24 Q. With your testimony here today?

02:29 25 A. Well, and yesterday. I mean, I know what I was responding

McConnell Cross of Carter

02:29

1 to in some cases.

2 Q. Do you recognize this defense exhibit, 130?

3 A. It's marked as one of mine. So, I'm sure.

4 Q. And if you look at the last page of this exhibit --

02:30 5 A. Right.

6 Q. -- that's your e-mail three times?

7 A. Yes. And something -- something has been removed from
8 there. I didn't produce this document.

9 Q. That's a document you offered into evidence in this trial,
02:30 10 though.

11 A. But it was taken from the production in the civil suit,
12 sir. It's not an e-mail that I produced from my attorneys.

13 Q. Did someone deposit money in your bank accounts during the
14 course of this deal you had going on with the hospital?

02:30 15 A. On occasion, yes, sir.

16 Q. Those checks, do you think Mr. Smith put those in your
17 account or did you put those in your account?

18 A. No. Wait. I thought you were talking about did my parents
19 give me some money to survive while I'm going through this.

02:30 20 Q. No.

21 A. Clarify your question, please.

22 Q. When you had -- when this case was going on, questions in
23 the case --

24 A. Okay. I'm sorry.

02:30 25 Q. -- when the policies were being sold to the hospital, and

McConnell Cross of Carter

02:31 1 the coverage, did Mr. Smith or anyone else put any of that
2 money into your bank account?

3 A. No. I mean, they would have written me a check and I would
4 have endorsed it, put it in the bank like anybody else would do
5 with their income or payroll check.

6 Q. You put it in the account?

7 A. Yes, sir.

8 Q. Did somebody spend your money at the jewelry store?

9 A. I spent my money at the jewelry store.

02:31 10 Q. And you're the one who opened up that account, the Carter
11 Insurance Services account?

12 A. Yes, sir, as -- as we have detailed.

13 Q. Did you -- you knew that Zurich was mailing policies to
14 Swetnam Insurance and Smith-Reagan, did you not?

02:31 15 A. I assumed they were mailed to them.

16 Q. And you knew that documents associated with this case were
17 being mailed to the hospital?

18 A. I'm sorry. Like, what type of document?

19 Q. Invoices?

02:31 20 A. If -- if I didn't deliver them, they were mailed.

21 Q. And you knew that e-mails were being sent?

22 A. On?

23 Q. On -- during the course of your dealings with the hospital,
24 from Mr. Swetnam to Mr. Thompson and --

02:32 25 A. Oh, yes, sir. Yes.

McConnell Cross of Carter

02:32 1 Q. And you knew that money was being wired back to Zurich to
2 pay for these policies?

3 A. I've never dealt with that; but I'm familiar that that's
4 how the money is paid to the carriers, through electronic wire,
5 yes, sir.

02:32 6 Q. That's the ordinary course of business?

7 A. I believe, for just about every agency.

8 Q. Do you remember we've talked about this letter to
9 Mr. Springfield?

02:32 10 A. Yes, sir.

11 Q. And you've seen and folks have talked about your name being
12 in this letter as a contact person, "contact Brent or me"?

13 A. Yes, sir.

14 Q. Why is your name in this letter?

02:33 15 A. Well, can you slide it down a little bit?

16 Q. Sure.

17 A. By September the 7th of '06, I was the main contact with
18 the hospital. And of the three people other than myself,
19 whether it be Mr. Swetnam, Mr. Smith or Mr. Reagan,
02:33 20 Mr. Springfield would be most liable to call me.

21 MR. McCONNELL: Your Honor, I'd ask Mr. Chaney refrain
22 from making comments -- or somebody at this table.

23 MR. CHANEY: I didn't say a thing, your Honor; and
24 that's offensive for him to suggest it.

02:33 25 MR. McCONNELL: There's comments coming from this

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02:33

1 table, your Honor; and it's distracting.

2 MR. CLARK: As an officer of the Court, I haven't
3 heard anything.

4 THE COURT: Let's all be reminded there will be no
5 stage whispering and also no affirmative signals that are
6 non-verbal, by way of nodding in agreement or rolling one's
7 eyes in disagreement. We have tolerance for none of that.

8 BY MR. McCONNELL:

9 Q. And just to go -- I'm sorry, Mr. Carter, about that. What
02:34 10 did you say your response was? I didn't hear you.

11 A. The -- in September of '06, I was the contact person. And
12 although I don't recall delivering this letter or -- or
13 seeing -- I know I didn't see it until the civil discovery --
14 it doesn't surprise me at all that my name would be on it as
02:34 15 someone to contact with a question.

16 Q. Why not?

17 A. Why would I be surprised --

18 Q. Because you're the contact person for the hospital?

19 A. Yes, sir.

02:34 20 Q. And here's some discussion in Mr. Swetnam's deposition,
21 Page 166, about the calculation in one of those Zurich
22 policies. Can you start reading where it says, "Question:
23 How --"?

24 A. Yes, sir.

02:35 25 "How was the \$2,185,000 figure calculated?"

McConnell Cross of Carter

02:35 1 THE COURT: You're going too fast.

2 "How was the \$2,185,000 figure calculated?"

3 A. "David, Joe, Brent, myself sat down, talked about it; and
4 they decided that we needed to add excess commission on the
02:35 5 policy to get it up into the market."

6 Continue?

7 BY MR. McCONNELL:

8 Q. Yes, please.

9 A. "And what other market indicators were you comparing it
02:35 10 against to suggest that this was an appropriate excess
11 commission?"

12 Can you slide it up?

13 "The one that we placed the most reliance upon
14 was Lorraine -- was Lorraine Lewis, because she had been
02:35 15 talking to Manny and Ward and Brent had been getting from Manny
16 and Ward that we were within the market -- within the market at
17 that level."

18 BY MR. McCONNELL:

19 Q. That's good.

02:36 20 How was the information translated back -- or
21 transferred back to Zurich on this price?

22 A. I mean, as I've stated, I would be at the hospital,
23 involved in my normal conversations or maybe a specific
24 conversation about, "Hey, how are we looking? What's the
02:36 25 consultant telling you? Are we in the market?"

McConnell Cross of Carter

02:36 1 And, typically, we had the advantage of being the
2 local agent as opposed to someone like Alliant, who was from
3 Houston.

4 The servicing of this account was somewhat labor
02:36 5 intensive in that there were lots of dinners and lots of golf
6 and lots of things to do with and for Mr. Springfield.

7 And Manny and Ward, without ever saying, "It
8 needs to be X-number of dollars," would say, "Yeah, you're
9 close" or, you know, "You need to get it down a little bit.
02:37 10 Jim wants it down a little bit."

11 I just got feedback. I mean, I'm a salesman. I
12 would see where I needed to be in order to get the business.

13 Q. Do you remember talking about -- did you ever ask any
14 questions of Mr. Springfield or Mr. Swetnam on how Zurich would
02:37 15 ultimately figure out the price, the price that was ultimately
16 charged on the policy?

17 A. No, sir.

18 Q. Did you ever ask, you know, how you were going to get your
19 million dollars out of the premium presented to the hospital?

02:37 20 A. No, sir.

21 Q. Because you're aware -- I mean, if you looked at the
22 document -- if you look at Exhibit 4, it indicates the premium
23 is for the entire Zurich policy, correct?

24 A. If I can see it?

02:38 25 Q. Is there any breakout in there for Smith-Reagan?

McConnell Cross of Carter

02:38 1 A. No, sir. As I stated, the annual premium, if you look in
2 the middle of the page, is \$2,185,325.

3 Some large percentage of that is going to go to
4 Zurich; and the rest would remain with the agent as commission,
02:38 5 as it does in just about every insurance transaction I've ever
6 seen. That's -- you get the commission by paying the balance
7 due Zurich.

8 Q. So, you would pay -- the hospital would pay the
9 \$2.3 million to Smith-Reagan?

02:39 10 A. Okay. Yes, sir.

11 Q. And then what would happen with the money?

12 A. It looks here like a stamping fee of \$2268.35 would go
13 wherever stamping fees go. The surplus lines tax would be
14 remitted, I believe, to the State of Texas for \$110,015.21.

02:39 15 The policy fee of eighty-three thousand oh
16 twenty-nine eighty-five, I don't know why or even if it has to
17 be disclosed, but it is. That would go wherever Swetnam
18 Insurance Services put it. I don't know where that went.

19 And, then, the actual balance due Zurich of
02:39 20 whatever it was, if it was 1.4 or 1.2, would be deducted out of
21 this two million one hundred eighty-five thousand three hundred
22 twenty-five thousand dollars and that one-point-something or
23 whatever would be wired to New York and the balance would be
24 the commission for the agency.

02:40 25 Q. Where is the document that shows that?

McConnell Cross of Carter

02:40 1 A. I mean, I've given you the only explanation I know; and I
2 don't believe there is a document that shows that, nor have I
3 ever heard any evidence that one is required.

02:40 4 Q. Because it -- I mean, this is a Zurich document. It says
5 the premium is 2.3 -- \$2.3 million. So, where does it say, you
6 know -- where does it break out you getting -- where does it
7 break out how you're going to get the million dollars out of
8 this policy?

02:40 9 A. Numerous people sat up here and testified you don't have to
10 disclose your commission in the State of Texas. And,
11 Mr. McConnell, I have to tell --

12 Q. Are you -- are you aware --

13 A. -- you I'm not the guy to teach you this.

14 THE COURT: No, no. There you go again. Let him
02:40 15 finish his answer.

16 A. I'm just not -- I'm not the guy to teach you this. I don't
17 know.

18 BY MR. McCONNELL:

19 Q. Are you aware of the difference between a "commission" and
02:40 20 a "premium"?

21 A. Yes, sir.

22 Q. And what does this say on this document?

23 A. It says "Total Premium."

24 "And a -- are you aware of a sales price versus a
02:41 25 profit?"

McConnell Cross of Carter

5 Q. I guess I just don't understand under that logic how you
6 get your money -- your million dollars out -- out of the
7 \$2.3 million going to Zurich.

8 A. And maybe you and I can take the surplus lines class
9 together, sir, because I don't know either.

10 Q. Do you remember the "four horsemen" e-mail that Mr. Colvin
11 showed you?

12 A. Yes, sir.

13 Q. And what was the context of that e-mail, you said?

14 A. One of the ladies in the office was upset with Mr. Smith.

15 Q. Why was she upset with Mr. Smith?

16 A. Mr. Smith had gone through some emotional ups and downs.

17 He had some health issues, as well. And he would come into the
18 office somewhat sporadically and usually with lots of
19 directives.

20 And Ms. Garcia worked in the commercial lines
21 area. She traditionally responded and reported to Mike
22 Swetnam. And she brought it to Mike's attention that she was
23 about to quit. She said, "I'm tired of David coming in and
24 raising Cain, and I'm ready to -- I'm just going -- I'm going
25 to quit."

McConnell Cross of Carter

02:42 1 And in the Monday morning meeting that we have,
2 it was brought to David's attention that he was causing a
3 problem. So, he wrote that e-mail detailing everybody's
4 duties.

02:42 5 Q. And what was your thinking about that e-mail?

6 A. It was fine. I didn't want Sherri to quit.

7 Q. You didn't care about Sherri, did you?

8 A. Yes, sir, I did, very much.

9 Q. Showing you Government's Exhibit 11-4A. Can you read this,
02:43 10 starting right here, after "'06"?

11 A. Yes, sir.

12 "I don't care what you allocate to Sherri, fax
13 paper and Kent. I changed your lives and demand a voice in
14 your operation. I am unreceptive to the concept of a principal
02:43 15 making calls with me when I can make things happen you can't
16 imagine."

17 Q. And in this -- I guess "the truth according to Brent" memo,
18 I mean, you're asking for an accounting, you said, right?

19 A. Yes, sir.

02:43 20 Q. Aren't you really just asking for more money?

21 A. No, sir, not at all.

22 Q. You're the golden goose, you're "the" agent in Harlingen; I
23 mean, you're bad, you're the man.

24 A. No, sir.

02:43 25 Q. You want more money.

McConnell Cross of Carter

02:43 1 THE COURT: Okay. All right. All right.

2 A. In fact, when we did the '06 renewal, I actually paid
3 Sherri a cash bonus out of my pocket because I appreciated all
4 the work she had done for me.

02:44 5 BY MR. McCONNELL:

6 Q. And what was your explanation of this \$1.8 million?

7 A. I was told by Mr. Swetnam that's how much income had come
8 in off the hospital roughly over two years.

9 I later, in the same document, referred to the
02:44 10 hospital as a "million-dollar account"; and I refer to it as a
11 "\$1.25 million account" in the same document. I have no idea
12 what the total income was on that account, sir.

13 Q. You did know about this \$850,000 premium, though, didn't
14 you?

02:45 15 A. No, sir. In fact, if you -- if you have a chance in a
16 minute, if you'll drag out one of your documents that you put
17 up a few minutes ago, that was the -- part of the binder for
18 Mr. Cook, I'll show you what I saw on that. You had the binder
19 from Mr. Cook --

02:45 20 Q. Well, it says "somewhere around," right?

21 A. Right. But you're trying to tie it to exactly. And,
22 number one, I never even saw the 936,000-dollar figure until
23 this was produced for the civil suit.

24 Q. You just got half of it.

02:45 25 A. I got 425,000 out of a million eight is what I was told.

McConnell Cross of Carter

02:45 1 And I don't know where 936 and 425 line up as a percentage. I
2 never saw any part of that policy processing fee, to my
3 knowledge; and I don't know anything about where the Federal
4 excise tax went on that particular cover note.

02:46 5 Q. I guess it's just curious that this is \$850,000 listed here
6 as the premium and that --

7 A. Right.

8 Q. -- you had made a million dollars -- or I guess \$850,000 is
9 the premium here --

02:46 10 A. Right.

11 Q. -- and that Smith-Reagan had made a million dollars off of
12 the first Zurich policy and that you sent this e-mail in
13 October, shortly after Smith-Reagan made those monies.

14 A. I don't see where that relates to the fact that there were
02:46 15 two years I was referring to and -- and no -- I mean, I -- I
16 appreciate you connecting those things together, but they
17 weren't connected in any way in what I am writing right there.

18 Q. Would you agree that it's curious?

19 A. It might be to you, sir. I had no idea that that 936 even
02:46 20 existed.

21 Q. You never saw Mr. Swetnam give this document to Mr. Cook?

22 A. No, sir. Still I did not see that.

23 And, by the way, sir, Mr. Vela testified that he
24 never saw Mr. Swetnam give that document to Mr. Cook.

25 Q. He didn't get \$425,000, though, did he?

McConnell Cross of Carter

02:47 1 A. That -- that would not have helped my eyesight, sir.

2 Q. I'm showing you -- let me zoom out here -- Government's
3 Exhibit 11-8. Do you recognize this e-mail?

4 A. Yes, sir.

02:48 5 Q. And as Mr. Colvin indicated, you appear to be giving some
6 instructions to folks?

7 A. Yes, sir. I'm relaying some information that was given to
8 me, point blank, from Jim Springfield and using examples to
9 make it pertinent.

02:49 10 Q. What are you instructing Mike to do?

11 A. I'm --

12 Q. Can you read that passage?

13 A. Sure.

14 "We must focus on a layman's mentality as we
02:49 15 gather information regarding Marsh and make certain that our
16 presentation is easily understood. These folks fancy
17 themselves as businessmen. Manny is the only one who admits
18 any semblance of ignorance and is the only one who defers to
19 our knowledge."

02:49 20 THE COURT: Slowly, slowly.

21 A. "Don't tell them anything about TDI, taxes or anything
22 negative about Marsh at this first meeting. Trust me. They
23 all believe they got objective counseling from the big broker.
24 Any challenge will make them timid about letting us in front of
02:49 25 their finance committee, and we have to get there."

McConnell Cross of Carter

02:49 1 BY MR. McCONNELL:

2 Q. And your attorney also showed you Government's Exhibit
3 11-1?

4 A. Yes, sir.

02:49 5 Q. Do you recall this e-mail?

6 A. Certainly.

7 Q. Do you recall telling the accounting manager,
8 Mr. Buentello, that he needs to count the beans and not try to
9 figure out how they're spent?

02:50 10 A. No, sir, I did not tell Mr. Buentello that.

11 Q. Who were you telling that to?

12 A. I told that to the gentlemen, JR, at the top and the
13 addressee, Mr. Joe Reagan.

14 Q. You weren't referring to Mr. Buentello?

02:50 15 A. I was referring to Mr. Buentello, yes, sir; but I did not
16 tell Mr. Buentello to count the beans.

17 Q. Oh, I appreciate the clarification.

18 So, what -- can you read this paragraph from
19 Mr. Buentello?

02:50 20 A. Certainly.

21 "I wanted to touch base with you on the current
22 insurance policy for Brownsville. I looked at the figures
23 provided in the worksheet by Brent, and I started doing some
24 calculations on my own; and some of the figures are either
02:50 25 overstated by several millions or understated in other

McConnell Cross of Carter

02:50 1 buildings.

2 "I was wondering, if I prepare an updated
3 insurance worksheet and the total insurable value is down, can
4 we get a refund on the remaining premium? Please let me know
02:51 5 what you think or give me options."

6 Q. And what was your response?

7 A. My response was, to Joe Reagan, "We need to find a way to
8 advise Carlos to work with and through Ward and to quit trying
9 to make a name for himself saving \$50 on insurance. We can
02:51 10 sure dig ourselves a hole by e-mailing this guy about premiums,
11 charges, etcetera. He needs to count the beans, not try to
12 figure out how they are spent."

13 Q. And, so, this was in March 2006. And then we have the
14 other e-mail exchanges, the policies; and then you told
02:51 15 Mr. Colvin that you were, I guess -- there was some issue with
16 talking to your neighbor about the VAC or something?

17 A. It --

18 Q. It's not relevant to this but --

19 A. Okay.

02:52 20 Q. -- I'm just saying later --

21 A. Right.

22 Q. -- in the summer of 2007, do you remember talking about
23 that?

24 A. Yes, sir.

02:52 25 Q. And you said that -- I guess you had a -- I guess

McConnell Cross of Carter

02:52 1 out-of-school talk with your -- is that how you characterize
2 it? Talking shop outside of Smith-Reagan?

3 A. Mr. Elliff was not only the vice chairman of the board, he
4 was also one of Mr. Springfield's best friends. And he was
02:52 5 concerned that the hospital was getting ready to put a whole
6 bunch of money into an insurance concept that might not work.
7 And he simply walked across the street and said, "What are you
8 hearing in your office? What are your guys saying? Is this a
9 pipe dream or will it work?"

02:52 10 And I relayed what I had been -- what I had
11 literally overheard in our office was Mr. Smith and Mr. Swetnam
12 realistically evaluated this program and said, "It won't work.
13 They're not going to make any money doing this. They're just
14 going to waste a bunch of money."

02:53 15 And I passed that on to Mr. Elliff, who I
16 believed was not asking so much as a board member, although he
17 was; he was asking as someone that didn't want to see
18 Mr. Springfield make an expensive mistake.

19 Q. And because of that conversation, you were fired from that
02:53 20 account?

21 A. Yes, sir.

22 Q. Were you rehired on the account later on?

23 A. Never formally.

24 Q. Well, but after that conversation -- you said that happened
02:53 25 in May 2007, right?

McConnell Cross of Carter

02:53 1 A. Yes.

2 Q. That's what I wrote down, May 27, 2007.

3 A. Okay.

4 Q. After you were fired from the account, you still received
02:53 5 the money for the second windstorm policy, the RAC RE policy,
6 \$294,000, and then you received the money from the second
7 Zurich policy.

8 A. Yes, sir.

9 Q. Isn't that right?

02:53 10 So, about a half million dollars, right?

11 A. Okay.

12 Q. After you were fired from the account. Is that correct?

13 A. Yes, sir.

14 Q. During that conversation -- and this guy, I guess he's your
02:54 15 neighbor or lives close to you or something?

16 A. Mr. Elliff?

17 Q. Yes.

18 A. Yes, sir.

19 Q. Did you tell him that there was an issue with this
02:54 20 windstorm coverage from the previous year?

21 A. What issue?

22 Q. That Mr. Swetnam had said that there was a meltdown, that
23 Mr. Swetnam had said there were problems --

24 A. No, sir.

02:54 25 Q. -- with the coverage?

McConnell Cross of Carter

02:54 1 A. No, sir. Because within a week of the meltdown,
2 Mr. Swetnam confirmed for me that the coverage had been taken
3 care of and that everything was fine on the account.

4 Q. How did he do that?

02:54 5 A. I literally said, you know, "Did you get your problem taken
6 care of?"

7 And he said, "Yeah. Everything is fine."

8 Q. So, you asked him how it was taken care of and he said it
9 was fine?

02:54 10 A. I didn't ask him how it was taken care of. I just asked
11 him if he got it taken care of.

12 Q. Why didn't you ask him how it was taken care of?

13 A. Didn't concern me.

14 Q. Is that because you already had your money?

02:55 15 A. No, sir.

16 Q. Is that because you already spent your money on your taxes?

17 A. No, sir, Mr. McConnell. Because that was his job, was to
18 get the coverage handled.

19 And this e-mail that you have on the screen is
02:55 20 still referencing the TWIA policies that were down at the
21 lowest levels, and I do understand those policies if you want
22 to discuss them.

23 Q. I know you want to talk about the e-mail, but let's talk
24 about the questions.

02:55 25 A. Yes, sir. I apologize.

McConnell Cross of Carter

02:55 1 Q. The -- I want to talk about the RAC RE policy. You weren't
2 involved in the second hurricane policy at all?

3 A. No, sir.

4 Q. Did you ever have discussions with Mr. Swetnam about RAC
02:55 5 RE?

6 A. I was familiar with the term. It was -- it was "RAC" stood
7 for "rent a captive," and it was a concept that had been
8 explored more than once.

9 Q. Did you ever have discussions with Mr. Smith about RAC RE?

02:55 10 A. I believe he was probably in the same meetings, yes, sir.

11 Q. What were the discussions that you had with Mr. Swetnam and
12 Mr. Smith about RAC RE?

13 A. Conceptual, about -- about a cell type captive. It's very
14 technical, and I'm not by any means qualified to discuss it.

02:56 15 But I remember the concept of RAC RE.

16 Q. And what was your memory of the concept?

17 A. That -- that it allowed different companies to participate
18 at a -- I guess at a smaller amount in a captive and -- and
19 it -- somehow it helped limit their liability.

02:56 20 Q. Did you understand that it was supposed to provide
21 hurricane insurance for the hospital?

22 A. No, sir. In fact, as I understand, the captive, by its
23 nature, did not provide any insurance. It was just a vehicle
24 to access surplus lines or offshore insurance that you can't
02:56 25 get to traditionally.

McConnell Cross of Carter

02:56 1 Q. But you understood that the discussion of the captive was
2 in the context of some insurance policy for the hospital?

3 A. I think that's fair, yes, sir.

4 Q. I mean, you guys weren't just talking about setting up a
02:57 5 captive for Smith-Reagan?

6 A. No. Certainly not, no.

7 Q. I would like you to look at Page 256 of Mr. Swetnam's
8 deposition.

9 A. Okay.

02:57 10 Q. Can you read where it starts, "Answer: No"?

11 A. "No, that was RAC" -- I call it "RE" -- "RAC RE. We were
12 attempting to set up RAC RE -- we were in a captive RE through
13 Harry Thompson. But that did not materialize, and we attempted
14 to re-issue the binder through GTC RE and then found out that
02:57 15 GTC -- Harry Thompson didn't get GTC set up either and it was a
16 hundred percent passthrough to Lantana -- or Landmark
17 American."

18 Excuse me.

19 "So, we just let Landmark American take it
02:58 20 straight. There was no captive. The hospital didn't go over
21 to Mexico to do a captive deal. No captive involved in the
22 transaction."

23 Q. Will you keep reading, please?

24 A. Can you raise it a little?

02:58 25 Q. Yes.

McConnell Cross of Carter

02:58

1 A. Thank you.

2 "Okay. You, I think, gave some words to what the
3 'RAC' of 'RAC RE' stand for. What was that?"

4 "Rent captive."

02:58 5 "Rent captive?"

6 "Yes, sir."

7 "And who was going to be a part of that entity?"

8 THE COURT: Hold on just a second.

9 Is it true somebody on the jury needs a break?

02:58 10 All right. Sorry. I thought somebody did.

11 Okay.

12 BY MR. McCONNELL:

13 Q. Will you please continue on the next page?

14 A. Sure.

02:58 15 "Brent Carter and myself."

16 "So, RAC RE was going to be an entity owned by
17 you and Mr. Carter?"

18 "Yes, sir."

19 "And the idea was you'd provide insurance through
02:58 20 that entity, right?"

21 "Pass through insurance, yes, sir."

22 Do you want me to keep going?

23 Q. No. That's fine. Thank you.

24 A. Okay.

02:59 25 Q. Were you going to own RAC RE with Mr. Swetnam?

McConnell Cross of Carter

02:59 1 A. I mean, it looks like I might have had an opportunity to
2 have some equity in it. I don't recall ever discussing owning
3 any of it.

4 Q. And Mr. -- you're aware that Mr. Smith also received
02:59 5 \$290,000 from the RAC RE policy? You've seen that check?

6 A. Yes, sir. Whatever the amount was.

7 Q. Was Mr. -- so, it was you and Mr. Smith and Mr. Swetnam
8 that were in this meeting where RAC RE was discussed?

9 A. I believe Mr. Reagan was there, as well.

02:59 10 Q. And Mr. Reagan. But did Mr. Reagan get any money off of
11 that policy?

12 A. I found out later he did not.

13 Q. Okay.

14 A. Or that he didn't get an equal share. Put it that way.

02:59 15 Q. Okay. We haven't seen a big cashier's check for that
16 policy, for Mr. Reagan?

17 A. I don't even know where that -- where that came from. I
18 didn't pull the records. So, no, sir.

19 And I'm not being smart. I don't recall seeing a
03:00 20 check for Mr. Reagan, no, sir.

21 Q. If you add the three checks that we've seen, they add up to
22 the price of the policy. I mean, we can do it here if you want
23 to.

24 A. They add up to the price of the policy?

03:00 25 Q. Right, the RAC RE policy that was split three ways between

McConnell Cross of Carter

03:00 1 you and Mr. Carter and --

2 A. Okay.

3 Q. Okay. I want to show you -- and Mr. Colvin also showed you
4 Government's Exhibit 11-11. Can you read this e-mail for the
03:00 5 jury? And it's August 28, 2007.

6 A. Yes, sir.

7 "Be that as it may, we did a good job pricing it
8 last year at a level I suspect was higher than you would have
9 placed it. The concept of pricing it down has no logic since
03:00 10 it will not lead to any consideration in the future. As soon
11 as VAC is capable, it will write the excess, if for no other
12 reason than to justify its existence."

13 Q. Weren't you off the account at this point?

14 A. Formally, yes. But by this time in August, Jim --

03:01 15 Mr. Springfield and I had gone to -- we had certainly made
16 amends and gone to California and he was talking to me again
17 about things as they would come up. I just wasn't spending
18 hardly any time at all at the hospital.

19 Q. So, were you on or were you off?

03:01 20 A. Overall, I was probably off. Formally, I was off.

21 Mr. Smith was the contact person, if you will. But in reality,
22 I mean, I was -- I was still in the loop as to what was going
23 on, by Mr. Springfield's design.

24 Q. Why did Mr. Springfield want to keep you in the loop?

03:01 25 A. We were -- we were friends. I was still the person that --

McConnell Cross of Carter

03:02 1 of the four people at the agency, the three principals and
2 myself, I was the one that he wanted to spend time with.

3 Q. And what does it say there? "Trust me"?

4 A. "Trust me on matters of cash and be more profitable. You
03:02 5 can always give it back via the Children's Gala, etcetera. I'm
6 really serious here."

7 I was telling him, "You might as well make as
8 much money as you can and still be within the market, as you've
9 done in the past," as explained to me is perfectly acceptable.

03:02 10 And then I said, "You know, we can always give it
11 back via the Children's Gala," which was a hospital event that
12 two years in a row we were the title sponsor of, as an agency.

13 Q. So, were you telling Mr. Smith that if he felt guilty about
14 it somehow that he could give it back to the hospital?

03:02 15 A. I don't say that there at all.

16 Q. I'm asking if that's what you're saying in your testimony.

17 A. No, sir. And I'm the one that can testify to that. No,
18 sir, that's not what I am saying at all.

19 Q. Okay. So -- okay.

03:03 20 And Mr. Colvin asked you about your 401(k). He
21 was kind of asking you, I guess, about the consequences of this
22 house?

23 Or -- I'm sorry. The consequences of this
24 indictment.

03:03 25 A. Yes, sir.

McConnell Cross of Carter

03:03 1 Q. Why did the government -- and I believe you said Inspector
2 Boyden took your 401(k)?

3 A. Well, I mean, yes, sir.

4 Q. Why did Inspector Boyden take your 401(k)?

03:04 5 A. I guess because he could.

6 Q. Because he could or because it had a bunch of the
7 hospital's money in there?

8 A. It didn't have any hospital money in it. One year, I
9 believe it was 2006, I probably actually paid in 2007 my taxes.
03:04 10 I think that year I paid something like \$183,000 in taxes and
11 my accountant said, "You owe, like" -- I'm doing easy math --
12 "like, 237,000 or 227,000 dollars in taxes. But you can pay
13 183 and put the other 44,000 into a 401(k) and, you know, you
14 can't touch it until you're 55 and all that."

03:04 15 So, I said, "Well, that's -- you know, I'll do it
16 tax deferred." So, I took his advice and put it into a 401(k).

17 And then, when this investigation started -- or I
18 guess when the indictment -- I don't know when Mr. Boyden did
19 it, but I understand --

03:05 20 Q. You realize that that's not Mr. Boyden's call. A Federal
21 Judge --

22 THE COURT: All right. All right. We're not going
23 to -- we're not going to --

24 THE WITNESS: Yes, sir.

03:05 25 A. And I wasn't trying to insinuate anything about Mr. Boyden

Clark Cross of Carter

03:05 1 either. I'm just saying the government seized that account
2 and -- which was -- I mean, they just seized it until this is
3 over.

4 MR. McCONNELL: Your Honor, I pass the witness.

03:05 5 THE COURT: Okay.

6 (Discussion off the record)

7 MR. McCONNELL: Actually, I have one more question if
8 I may.

9 THE COURT: All right.

03:05 10 BY MR. McCONNELL:

11 Q. This is my last question, I promise.

12 A. It's okay.

13 Q. Mr. Carter, I'm showing you Government's Exhibit 11-15.
14 Can you read this sentence?

03:06 15 A. Yes, sir.

16 "There is always a reckoning. Wise old insurance
17 guy."

18 Q. Thanks.

19 MR. McCONNELL: No further questions, your Honor.

03:06 20 THE COURT: Okay. Mr. Clark?

21 MR. CLARK: May I proceed?

22 THE COURT: You may.

23 MR. CLARK: Thank you.

24 **CROSS-EXAMINATION**

03:06 25 BY MR. CLARK:

Clark Cross of Carter

03:06 1 Q. I think in evidence, already marked as Carter Exhibit
2 Number 1, is the plaintiff's original petition in the civil
3 suit. I would like to show that to you.

4 THE COURT: I'm sorry?

03:07 5 A JUROR: I'm sorry, your Honor.

6 THE COURT: I'm sorry. Sorry.

7 A JUROR: Could we take a break before they start?

8 THE COURT: Let's take a break. All right. Try to
9 keep it to 10 minutes.

03:07 10 MR. CLARK: Withdraw the question. I'm sorry.

11 (*Jury not present*)

12 THE COURT: All right. I don't know if the jury is
13 willing to stay any later tonight. I would really like to
14 conclude the testimony before we break. Whether we do or not,
03:07 15 we ought to everyone plan to stay a little bit later to work on
16 the jury charge.

17 I can tell you in advance some of my questions.
18 You can be thinking about them.

19 On the "knowingly" instruction, Instruction 21,
03:08 20 defendants had the second paragraph of that instruction in
21 brackets. We didn't know what that meant. So, let us know
22 whether you're objecting to it or not.

23 On Instruction Number 22, only the defendants
24 asked for it; but they didn't give us any content. They
03:08 25 just -- it's blank. So, we need to know what you're asking us

Clark Cross of Carter

03:08

1 to do.

03:08

2 You don't have anything on the verdict form. We
3 need to -- we need to work that out, unless you're just going

4 to go with, as to Count 1, for each defendant, as to Count 2,
5 guilt or innocence -- guilty or not guilty.

03:09

6 There are minor wording differences throughout
7 these instructions. The default option is always going to be
8 the pattern. Defendants are slightly closer to the pattern
9 than the plaintiffs.

03:09

10 And on some of these instructions where one side
11 asks for them, we need to know whether the other side opposes
12 or not. Like in Section 24, only defendants wanted the foreign
13 commerce instruction.

14

Okay. Thank you very much.

03:09

15 MR. CLARK: Thank you, your Honor.

16

(Recess was taken from 3:09 to 3:20 p.m.)

17

(Jury not present)

18

THE COURT: By the way, the jury says they'll work
19 till 5:00 tonight; but that's not an invitation.

03:20

20 MR. CHANEY: I think that makes a lot of sense, your
21 Honor.

22

MR. CLARK: I do understand.

23

(Jury present)

24

THE COURT: Members of the jury, please be seated.

03:23

25 MR. CLARK: Your Honor, may I proceed?

Clark Cross of Carter

03:23 1 THE COURT: You may proceed, yes.

2 MR. CLARK: Thank you very much.

3 BY MR. CLARK:

4 Q. I'm going to put up my copy of what's in evidence as
03:23 5 Carter's Exhibit Number 1. Okay?

6 It says "Cook," but it's actually Carter's 1.

7 Okay?

8 A. Okay.

9 THE COURT: Let's call it Carter 1, and we'll --

03:24 10 It's been marked in another lawsuit. That's what
11 the confusion is, ladies and gentlemen.

12 BY MR. CLARK:

13 Q. And just for your reference, this is the civil suit that
14 was filed in Cameron County. You're familiar with that, aren't
03:24 15 you?

16 A. Yes, sir.

17 Q. I imagine you've taken a look at this lawsuit before, have
18 you not?

19 A. Yes, sir. I'm actually a party to that lawsuit now.

03:24 20 Q. I would like to call your attention to the upper right-hand
21 corner.

22 A. Yes, sir.

23 Q. What's the date that this lawsuit was filed?

24 A. April the 30th, 2008.

03:24 25 Q. Do you remember that day?

Clark Cross of Carter

03:24 1 A. Yes, sir.

2 Q. How so?

3 A. Well, by that time Mr. Swetnam and I were working in
4 another office in Harlingen, for the bank, the new agency that
5 was begun. And I walked in right after he had been served.

6 Q. By the way, you and I haven't gotten together to talk about
7 your testimony, have we?

8 A. No, sir.

9 Q. I'm going to show you what's in evidence now as Defendants'
03:25 10 Trial Exhibit Number 7.

11 A. Okay.

12 Q. This is the \$263,000 check that there's been some testimony
13 about.

14 A. Yes, sir.

03:25 15 Q. You with me?

16 This was actually -- it looks like a signature
17 from David Smith. Do you recognize Mr. Smith's signature?

18 A. Yes, sir.

19 Q. It purportedly was created on January the 8th of 2008,
03:25 20 right?

21 A. Yes, sir.

22 Q. But as we've seen previously -- and I'll call your
23 attention from the bank's processing stamp, right here -- the
24 date that it was actually deposited was what?

03:26 25 A. It says 2008-04-30.

Clark Cross of Carter

03:26 1 Q. Okay. That would be?

2 A. 4-30-08.

3 Q. Same date that the lawsuit was filed?

4 A. Yes, sir.

03:26 5 Q. Were you privy to a discussion between Michael Swetnam, my
6 client, and David Smith about, "Why am I getting this check
7 that's dated in January, David, when it's April the 30th right
8 now?"

9 A. Yes, sir. Just for a moment but --

03:26 10 Q. What do you recall about that situation?

11 A. Well, I walked into the office that morning and Mr. Swetnam
12 had a lawsuit in his hands and he had been served about 9:15 in
13 the morning. And when I walked in, Mr. Smith was there, as
14 well.

03:27 15 And he handed Mike that check and said, "Well, I
16 want you to use this for your defense fund."

17 Q. Okay.

18 MR. CLARK: May I have permission to approach, your
19 Honor?

03:27 20 THE COURT: You may.

21 MR. CLARK: Thank you.

22 BY MR. CLARK:

23 Q. I'm going to show you what has been marked as Exhibit 21,
24 Swetnam 21. Just briefly take a look at that. And I'm going
03:27 25 to ask you, if you've seen that document, if you're familiar

Clark Cross of Carter

03:27 1 with that document, whether you can authenticate that document,
2 sir.

3 A. Yes, sir, I believe I've seen this.

4 Q. Does it appear to be a true and an accurate document, from
03:27 5 what your memory is?

6 A. Yes, sir. It's a Power Point presentation.

7 MR. CLARK: Okay. Move to introduce this exhibit into
8 evidence at this time, your Honor.

9 MR. McCONNELL: No objection.

03:27 10 THE COURT: Admitted without objection.

11 BY MR. CLARK:

12 Q. Would from time to time Michael Swetnam create Power Point
13 presentations to ostensibly help the hospital people understand
14 the products and the issues?

03:28 15 A. Yes, sir.

16 Q. Is that what this Defendants' Trial Exhibit 21 concerns?

17 A. Yes, sir.

18 Q. I'll look at it very quickly. We're going to try to move
19 fast.

03:28 20 This appears to be a presentation that was
21 concerning the Texas Windstorm Insurance, primary windstorm
22 proposal, renewal options. Is that what you recall?

23 A. Yes, sir.

24 Q. And purportedly would cover the period of 2006 through
03:28 25 2007, correct?

Clark Cross of Carter

03:28

1 A. Yes, sir.

03:29

2 Q. Among other things -- how much do you recall about this
3 presentation? Let me ask you that instead.

03:29

4 A. If it's the one that I'm -- that I'm remembering, it was
5 what Mr. Eastham would call a "shirt sleeve meeting," just --
6 he had a fairly large office and had a big round table we could
7 all just kind of sit around and just go over stuff like this.
8 It wasn't formal at all.

03:29

9 Q. Okay. Would this have been a presentation that would have
10 been handed out -- and the reason I'm asking you this
11 question -- let me turn to some of the back pages.

12 I don't know how familiar you are with Power
13 Points, but do you see that this is a smaller slide that
14 appears to have some space for some people that would be the
15 recipients to make notes on each slide?

16 A. Yes, sir.

17 Q. And I guess my question to you is whether you have an
18 independent recollection of whether or not this Power Point was
19 reduced to a hard-copy form and handed out to Mr. Swetnam or
20 Mr. Eastham or others.

21 If you don't know, you don't know.

22 A. I actually don't know.

23 Q. Okay. Fair enough.

24 You notice this is a presentation that was in a
25 folder apparently with the notation "2006." Do you see that?

Clark Cross of Carter

03:30

1 A. Yes, sir.

03:30

2 Q. Which would be consistent, would it not, with the dates
3 that are reflected herein: June 15th of 2006 through June 15th
4 of 2007?

03:31

5 A. Yes, sir.

03:31

6 Q. Now, you, obviously, have sat through the whole proceeding.
7 And I want to ask you, do you recall the line of questions that
8 I had previously of Mr. Vela about where are the 2006 finance
9 committee minutes --

10 A. Yes, sir.

11 Q. -- where are the 2006 board of directors minutes?

12 A. Yes, sir.

13 Q. More particularly, I would like to know whether you know if
14 presentations were made by Mike Swetnam, David Smith, Joel
03:31 15 Reagan, yourself through the Swetnam Insurance Services or
16 through the Smith-Reagan agency to either the board or the
17 finance committee of the Valley Baptist Health System during
18 this period of time.19 A. I'm fairly certain -- I can't be exactly sure of the dates,
03:31 20 but I do remember going and making introductions and having
21 Mr. Smith make a presentation of a Power Point to the finance
22 committee.23 Q. Okay. In evidence as Government's Exhibit 1E is a document
24 that was identified as a document created, I believe, by Ward
03:32 25 Cook.

Clark Cross of Carter

03:32 1 A. Yes, sir. That looks like Mr. Cook's handwriting.

2 Q. Okay. If we go to the second page of this particular

3 document, does this look like Mr. Cook's handwriting here, sir?

4 A. Yes, sir.

03:32 5 Q. The handwriting is even worse than mine; but it appears to

6 say "windstorm," does it not?

7 A. Yes, sir. I think it's just been copied and the top is cut

8 off.

9 Q. Okay. Just kind of walking down through here, "captives,"

03:32 10 is that what it looks like to you?

11 A. Certainly -- I mean, that would make sense. Captive --

12 Q. If you can decipher it, it might be helpful. "Selling us

13 captives for" --

14 A. Yeah, "Selling us captives for -- "W/S" would be "windstorm

03:32 15 insurance."

16 Q. "Ariel RE Limited"?

17 A. Yes, sir. "Bermuda, non-admitted" -- that's the word

18 "captive," I assume.

19 Q. Okay.

03:32 20 A. "Mexico," asterisk.

21 Q. Okay. Now, down here at the very bottom is a mention of

22 TWIA, the Texas Wind Insurance -- I don't know the last letter.

23 A. Association.

24 Q. Association.

03:33 25 And it says, "3 million each building"?

Clark Cross of Carter

03:33

1 A. Yes, sir.

2 Q. Now, recall the testimony of Lorraine. And I think when
3 she testified on direct she said that there was only \$3 million
4 of coverage in that first layer that was put together by the
03:33 5 Smith-Reagan and Swetnam Insurance group for the Valley Baptist
6 Hospital System.

7 Was that your understanding, there was only a \$3
8 million first layer?

9 A. No, sir. And that's a good example of some of the work I
03:33 10 did. As I recall, Valley Baptist had, I think, 32 what you
11 would call "satellite buildings" around the main hospital
12 building. And it was my job to work -- I think Mr. Reagan
13 actually worked on the spreadsheet, but I went out and measured
14 and took pictures of -- there's a -- the TWIA app required a
03:34 15 photo and square footage and a building value and -- and you
16 had to get the construction and when it was built and what kind
17 of wiring it had, all the pertinent information like you were
18 trying to insure your home. And I did that for those, like, 32
19 or 33 buildings.

20 So, there was a -- I think I remember testimony
21 here there was \$96 million worth of coverage. So, that would
22 be 32 times, or 33.

23 Q. Let's go now and take a look at -- I hate to be redundant,
24 but focus a little bit differently.

03:34 25 Government's Exhibit 13, which has had a fair

Clark Cross of Carter

03:34 1 amount of play, at least today, in front of the jury, September
2 the 7th, 2006, letter -- this is my copy -- to Jim Springfield?

3 A. Yes, sir.

4 Q. This is the same document. It's a different copy than --
03:34 5 but it's the same document you've been shown, is it not?

6 A. Yes, sir.

7 Q. Now, in your direct examination with Mr. Colvin questioning
8 you, reference was made to a spiral notebook.

9 Is that what you would call this?

03:35 10 A. Yes, sir.

11 Q. This has been marked as Defendant Brent Carter's
12 Exhibit 131. And it was provided to you to refresh your
13 memory.

14 MR. CLARK: I would like to approach if I may, your
03:35 15 Honor?

16 THE COURT: Yes you may.

17 BY MR. CLARK:

18 Q. I would like to ask you just again, so that everybody is
19 clear about this particular document, how was it that this
03:35 20 document was created. And go ahead and explain the process to
21 us, please.

22 A. Well, as I testified, I was getting some pressure from
23 Mr. Reagan about new business production and kind of the -- you
24 know, "Carter, all you do is play golf with the boss. What are
03:36 25 you doing with all your time?"

Clark Cross of Carter

03:36 1 And I think I pointed out to you that I took
2 this -- I just started making notes that, you know, I went by
3 to drop something off for a doctor and took 35 minutes; I
4 delivered something to Ward Cook, it took 45 minutes. And I
03:36 5 just kept up with this for a period of weeks following the
6 renewal. And it was mostly for my reference, but it was also a
7 little bit of an --

8 Q. CYA?

9 A. -- insurance policy. Yes, sir.

03:36 10 Q. I notice that there's different ink in it.

11 A. It actually -- my truck was my office quite often, and it
12 slid around in the floorboard of my truck most of the time.

13 Q. Are you a coffee drinker?

14 A. No, sir. That would be Diet Coke.

03:36 15 Q. This might have been a place holder, too, at some point in
16 time?

17 A. Yes, sir. Like I said, it was just for me. It wasn't
18 anything that I was asked to produce for anybody.

19 MR. CLARK: Judge, I would move at this time to
03:37 20 introduce what has been marked as Exhibit 131.

21 MR. McCONNELL: Same objection, your Honor. We just
22 received it today, and it's hearsay.

23 MR. CLARK: May I respond?

24 THE COURT: Yes, you may.

03:37 25 MR. CLARK: We have heard the claim of recent

Clark Cross of Carter

03:37 1 fabrication against Mr. Swetnam in connection with the
2 government's theory of the letter to Mr. Springfield. This
3 document, which this is first time I've seen it, I think is
4 properly admissible to rebut the implication of recent
03:37 5 fabrication that the government has made over and over and over
6 again, your Honor.

7 THE COURT: Well, I mean, it would come in under
8 801(d)(1). I am concerned about the lack of production,
9 though.

03:37 10 MR. McCONNELL: Your Honor, I think 801(d)(1), are you
11 talking about reason for a prior statement?

12 THE COURT: Yeah.

13 MR. CLARK: I would think it would go to the weight
14 and not to the admissibility, though, your Honor.

03:38 15 THE COURT: It doesn't have to be under oath if it's
16 consistent with the declarant's testimony. 801(d)(1)(B).

17 That's not my concern. My concern is we're just
18 now seeing it. That's my concern.

19 MR. CLARK: I do understand.

03:38 20 THE COURT: I'm -- on balance, I'm going to allow it.
21 Your objection is noted.

22 MR. McCONNELL: Your Honor, is it the entire journal
23 or just the page that's relevant?

24 THE COURT: Are you offering the entire journal?

03:38 25 MR. CLARK: The entire journal, yes, your Honor. I

Clark Cross of Carter

03:38

1 think that --

2 THE COURT: How many pages have markings on them?

3 MR. CLARK: Judge, it looks like, on balance, about --
4 about 10 in front, a couple on the back, and most --03:39 5 THE COURT: I'm going to allow it for now. I may take
6 a --7 MR. CLARK: I understand. I'm just going to focus in
8 on a page or two.

9 THE COURT: Okay. All right.

03:39 10 MR. McCONNELL: Your Honor, may we look at it?

11 MR. CLARK: Absolutely. I thought you had.

12 *(Discussion off the record)*

13 MR. McCONNELL: Thank you.

14 MR. CLARK: May I then proceed, your Honor?

03:39 15 THE COURT: You may.

16 BY MR. CLARK:

17 Q. We're looking at -- for the record, this is Government's
18 13-2, which is that letter which is up -- it's -- actually,
19 this is not the letter that I wanted to show. But this is
03:39 20 Government's 13 -- 13 straight up, September 7th of 2006 letter
21 to Jim Springfield -- or James, I guess, not to be too
22 informal. Ostensibly, from Mr. Swetnam, correct?

23 A. Yes, sir.

24 Q. Now, Defendant Brent Carter's Exhibit 131 -- it's too
03:40 25 bright to show; but this is 131, for the record.

Clark Cross of Carter

03:40 1 Here it is.

2 Down at the bottom appears to be an entry for
3 9-7. Would you --

4 There appears to be a Diet Coke, by the way.

03:40 5 Would you go ahead and explain these -- I really
6 want to focus in on this entry down here at the bottom.
7 There's some shorthand, some acronyms, apparently; and I would
8 like you to translate it for us. Just read it out loud; but,
9 you know, where you say "D & O" -- I'm sure that's "directors
03:41 10 and officers."

11 A. Yes, sir. The bottom part says, "Letter" -- it's my
12 handwriting so I can -- it says, "Letter to JGS office Re
13 meltdown," in quotes. And I think that says, "A" -- I think
14 it's "ARE," and then I've got "Landsdow" and "London" and a
03:41 15 question mark and just says, "MNS to follow up."

16 Q. Michael N. Swetnam?

17 A. Yes, sir, that's how I refer to Michael.

18 Q. Let me take you back. And above the -- what we've now
19 discerned is Diet Coke and not coffee -- I don't mean to
03:41 20 suggest something that's not what the answer is, but could that
21 be "Ariel"?

22 A. I mean, yes, I suppose it could be, sure.

23 Q. You just don't know, quite candidly?

24 A. I don't know what -- I mean, I believe it's probably
03:41 25 referring to Ariel, but I don't know what my handwriting is

Clark Cross of Carter

03:41 1 doing there. It was -- again, it was just a note to me,
2 marking time.

3 Q. Yours is better than mine, I assure you.

4 Similarly, on the next page, I'm assuming "9-8"
03:42 5 would be "September the 8th." Is that true?

6 A. Yes, sir.

7 Q. You have an entry about what you did that day. You got
8 a -- "four hours" circled here; but would you read that out
9 loud, please?

03:42 10 A. It says, "Spent all afternoon with JGS" -- that's
11 Mr. Springfield; "Manny" is Manny Vela -- "and Bill Boyer. We
12 flew to Houston and played golf at Lochinvar Golf Club up in
13 North Houston. I just wrote "good visit" out to the side.

14 Q. "Great"?

03:42 15 A. "Great visit."

16 Q. "Great visit." Okay.

17 "Spoke," below, "with" --

18 A. "Spoke with somebody Re work comp Brownsville. Are we
19 double billed 7-1 to 9-1?" That was just a question I ended up
20 taking back to Smith-Reagan.

21 Q. Okay. And the entries that are in here are basically --
22 were these made contemporaneously or as close in time as you
23 could to the events, to keep track of them?

24 A. Yes, sir. Typically, they were made in my truck. I would
03:43 25 just write them -- I'm a lefty, and I wrote, across myself, on

Clark Cross of Carter

03:43 1 my armrest; and then I would just throw it back on the floor.

2 Q. I see there's a different ink in different entries.

3 A. Yeah. Whatever pen was in my pocket at the time is the pen

4 that I would use.

03:43 5 Q. About --

6 A. This is --

7 Q. About eight pages in, it looks like kind of a to-do list.

8 Is that what that was?

9 A. Yes. It's predominantly just unrelated. That's just notes

03:43 10 for me. At that point I flipped way to the back.

11 Q. Looks like you have a map here how to get somewhere?

12 A. That's a map for somebody, yes, sir.

13 Q. And then there's -- there's really just blank pages.

14 Sporadically there would be an entry.

03:43 15 A. Right.

16 Q. When did -- when did you get fired -- I think you've

17 already testified, but excuse me.

18 When did you get fired from the account

19 officially or, you know -- you say "fired." You were kind of

03:44 20 taken off the account because of --

21 A. Yes, sir. "Reassigned" would be, I guess, a more

22 politically correct term. It was in -- but it was "fired."

23 But it was in May of -- late May of '07.

24 Q. All right. And then there's really no entries until you

03:44 25 get to the very back. And I'm just -- I'm guessing -- and you

Clark Cross of Carter

1 correct me if I'm wrong, but it looks like somebody had died.
2 And just from context, "Words are not enough. She is well and
3 whole. She's in a better place"?

4 A. Yes, sir. That was my pastor and child -- his wife had
5 passed away.

6 Q. Now, was there, to your knowledge -- we talked a little bit
7 about E & O coverage with other witnesses.

10 A. Yes.

11 || 0. Errors and omissions coverage?

12 || A. Yes, sir.

13 Q. To your knowledge, did the Smith-Reagan agency carry errors
14 and omissions coverage during this period of time?

15 || A. Yes, sir.

16 Q. Do you have any idea what the amount of the errors and
17 omissions coverage was?

18 A. No, sir, I don't.

19 Q. Do you have an understanding of what the purpose of having
20 an errors and omissions coverage policy is?

21 A. Well, if an agent makes a mistake -- I mean, it could be --
22 I guess as simple as getting a policy issued for a hundred
23 thousand dollars that ought to be a million dollars and there
24 was -- I'm talking about the coverage limit -- and then there
25 was a loss and you didn't have enough insurance or something,

Clark Cross of Carter

03:45 1 the insurance would kick in to cover the balance.

2 Q. You had mentioned a little bit about Mr. Springfield's

3 personality, that he -- he was kind of in control, is the best

4 way I can shorthand it.

03:46 5 A. Yes, sir.

6 Q. I want to ask you a little bit about whether or not you

7 were aware of his financial compensation package at the

8 hospital system.

9 A. Not -- not in any formal way. I heard, you know, innuendo

03:46 10 and things. He and I did not exchange that information with

11 each other.

12 Q. Well, I don't want to go into gossip and innuendo. Let's

13 speak from personal knowledge. Okay?

14 A. Yes, sir.

03:46 15 Q. I'm pulling out an exhibit; so, if you'll just bear with me

16 for a second, I'll make it quick. And, again, I'm sorry to be

17 redundant. This is just kind of a follow-up to some questions

18 before.

19 This is Government's 11-10. It's one of those

03:47 20 e-mails that has been covered perhaps ad nauseam, and I have a

21 couple of follow-up questions.

22 A. Yes, sir.

23 Q. You had described -- you had described in here -- and I

24 guess I need to zoom in so everybody can kind of see. I don't

03:47 25 know if I can fit it on the page. I'm going to try.

Clark Cross of Carter

03:47 1 This paragraph right here caught my attention,
2 and I wanted to follow up and make sure I understood.

03:47 3 "After the welding goggles" -- it's kind of
4 poetic. "After the welding goggles jump to mind followed
5 closely by the" --

6 THE COURT: Too fast. Start over.

7 MR. CLARK: I do apologize, Judge.

8 BY MR. CLARK:

9 Q. -- "followed closely by the accidental implication they
03:47 10 sought to commit a crime over their trusts."

11 A. Yes, sir.

12 Q. And if I understood what you were saying, there had been
13 some income that the hospital wanted to pull out of a trust.
14 And to do what with?

03:48 15 A. Well, as I understand -- I was in one of the meetings, and
16 it certainly wasn't -- it was above my head but --

17 Q. Meetings with whom?

18 A. Mr. Smith, Mr. Springfield, Mr. Eastham. And I believe
19 Mike was there, but I can't -- I can't swear to it. But I was
03:48 20 there, for sure.

21 Q. At one of the hospital facilities?

22 A. Yes, sir.

23 Q. Okay. Go ahead. I'm sorry.

24 A. They had a trust that at one point had covered something.
03:48 25 It was a balance in there that they used to pay, like, some

Clark Cross of Carter

03:48 1 self-insured claims. And as I recall, the balance was
2 somewhere around, I think, under two and a half million
3 dollars. And it had been sitting there for several years.

4 And apparently, everybody at the hospital, they
5 agreed that whatever it's covering is no longer an issue. If
6 it was medical -- if it was doctors' claims or whatever,
7 there -- there aren't any more that we don't know about. So,
8 this money is just sitting there.

9 And they wanted -- "they" being Mr. Springfield
10 and the hospital. They wanted to fold that trust down and then
11 bring that money, you know, back into where they could use it
12 for -- to run the hospital.

13 Q. And the hospital had, I think we've heard earlier, a --
14 generally a non-profit purpose but they had some for-profit
03:49 15 parts, correct?

16 A. Yes, sir.

17 Q. And if I'm guessing correctly, was the discussion about
18 violating the tax laws by doing that or there had to be some
19 tax aspects to it because you were taking money that was put
03:50 20 into a non-profit designation and you can't just move it
21 without some tax implications? If you know.

22 A. I really don't know, no, sir.

23 Q. What I was trying to figure out is who said that this would
24 be --

03:50 25 A. To commit a crime?

Clark Cross of Carter

03:50

1 Q. Yeah.
2 A. That was Mr. Smith. He insinuated that there might be
3 something fraudulent with taking this money out of a trust and
4 putting it into your general operating budget and calling it --
03:50 5 they wanted -- they called it a nice little pickup. They
6 wanted it to be profit on the bottom line.

7 Q. Everybody wants to be profitable on the bottom line; but
8 that didn't happen, did it?

9 A. I really don't know what -- I don't know if they took the
03:50 10 money or how they folded it up.

11 Q. Fair enough. That's fine. And you don't know whether or
12 not Mr. Springfield's package was tied somehow to the profits
13 on the bottom line, with his bonuses and whatnot?

14 A. That's what's been indicated to me by several folks.

03:51 15 Q. Okay. I gleaned from your testimony and from others that
16 he was an avid golfer?

17 A. Yes, sir. He's a good one.

18 Q. He had his house, did he not, built right next to the golf
19 course that the hospital ended up buying?

03:51 20 A. Yes, sir.

21 Q. Right on the -- one of the fairways, I guess, right next to
22 it?

23 A. I think he's on Number 12.

24 Q. Did anybody ever discuss with you or around you this idea
03:51 25 of bond covenants and the hospital's need to be insured up to

Clark Cross of Carter

03:51 1 certain levels so they don't violate their bond covenants?

2 A. Yes, sir.

3 Q. Did you have a feel for what that was all about?

4 A. I was in a meeting that involved Mr. Eastham, where he
03:52 5 stated that they had to -- the comment was made that nothing
6 would ever happen at the hospital that was over a certain
7 limit, whatever it was.

8 And Mr. Eastham said, "But we still have the bond
9 covenant. And in order to be in compliance, we've got to
03:52 10 carry" -- I think at the time it was 235 million in property
11 coverage.

12 Q. And did you understand a bond covenant means that the --
13 effectively, the lender is trying to protect their investment
14 and they're requiring that the hospital keep the facilities
03:52 15 properly insured?

16 A. That's the way I understood it, yes, sir.

17 Q. And if you violate a bond covenant, bad things can happen,
18 right?

19 A. Yes, sir.

20 Q. You can perhaps have the bond accelerated and that type of
21 stuff?

22 A. There could be -- I was told there could be penalties and
23 you could be what they called "forced placed."

24 Q. Whatever it meant, it was not a good thing?

03:53 25 A. No. It would have been expensive.

Clark Cross of Carter

03:53 1 Q. Now, were you around at the time when there was this vote
2 of no confidence by the staff, about Mr. Springfield?

3 A. Yes, sir.

4 Q. And was that a small or a big thing?

03:53 5 A. It was -- it was a big thing.

6 Q. Kind of elaborate on that, if you don't mind.

7 A. Well, there was -- any time there's unrest in an
8 organization like that, as you can imagine, in South Texas, for
9 example, the -- the unions came in and started talking to the
03:53 10 nurses and it was kind of a "If you don't think you're getting
11 treated good here, why don't you-all join our union?" And it
12 made -- it made the board very nervous.

13 A lot of the doctors -- I shouldn't say "a lot."
14 I was told later it was about 150 doctors, you know, decided
03:53 15 they just didn't have confidence in management in general, the
16 way the hospital was being managed. It wasn't specifically
17 Mr. Springfield, but he was the guy that ended up in the
18 newspaper.

19 Q. And he was the guy that ended up leaving, resigning. Isn't
03:54 20 that correct?

21 A. Well, later, yes, sir.

22 Q. And in connection with his resigning or being pushed out
23 the door or however to properly characterize it, were you still
24 talking to him by that point in time?

03:54 25 A. Yes, sir. I'm trying to remember the exact date. And I

Clark Cross of Carter

03:54 1 don't remember exactly when he left the hospital, but that --
2 his situation at the hospital didn't have anything to do with
3 our personal relationship.

4 Q. Okay. So, you've maintained -- or you maintained at some
03:54 5 point, I guess, outside the lawsuit, some sort of relationship?

6 A. Yes, sir. I don't recall exactly. Either the civil
7 lawsuit or his departure, whichever came first. I mean, if I
8 was in the civil suit, I wasn't talking to him much.

9 Q. I can certainly understand that.

03:55 10 A. Yes, sir.

11 Q. Now, this is going to be just kind of the last part of my
12 line of questioning, if you don't mind. And I'm sure you don't
13 mind but --

14 A. No, sir. I'm fine.

03:55 15 THE COURT: Carry on.

16 MR. CLARK: I strike my own sidebar. I'm sorry.

17 BY MR. CLARK:

18 Q. You were asked about my client's testimony in the civil
19 suit?

03:55 20 A. Yes, sir.

21 Q. And I kind of -- again, I apologize for being a bit
22 redundant; but I'm going to give a bit more context to the
23 question and answer here.

24 Starting on Page 225, Line 2, and let's read it
03:55 25 on down to -- I believe Mr. McConnell started on 226. Let's

Clark Cross of Carter

03:55 1 read -- if you don't mind being the reader --

2 A. I'll read it, yes, sir.

3 Q. Would you read the question and answer pairs, starting with

4 Line 2?

03:56 5 A. Yes, sir.

6 "And then you took the \$936,000. And on

7 September 5th you gave 425,000 to Brent Carter?"

8 "That's correct."

9 "Did you pay any portion of the 936,000 to

03:56 10 Mr. Thompson or Mr. Lord?"

11 "No."

12 "Did you pay any portion of the 936,000 to any

13 company that was affiliated with Mr. Lord or Mr. Thompson?"

14 "No."

03:56 15 "What did Brent Carter do" --

16 Q. I'm sorry to do that to you.

17 A. I'm sorry. I'm going too fast.

18 Q. I'm going to take it off the page.

19 Okay. Go ahead.

03:56 20 A. "What did Brent Carter do to earn 425,000 of the 936,000

21 that was paid pursuant to Exhibit 65?"

22 Q. Okay.

23 A. "Brent Carter received 425,000 basically to settle the 2005

24 Smith-Reagan accounting and because he was my partner. He got

03:56 25 paid that money at that time, but it wasn't for that. He got

Clark Cross of Carter

03:57 1 paid that money on the 5th to hold."

2 Q. "On the 5th" is referring to what date, please?

3 A. September the 5th.

4 Q. 2000 and?

03:57 5 A. '6.

6 Q. Okay.

7 A. "To hold for what?"

8 "To hold in a bank account."

9 "But why was he given it to hold?"

03:57 10 "Because I was up over 1.8 million in one bank
11 account at Border bank. I told him to take this money and go
12 set up a bank account and hold the" --

13 Q. To be continued.

14 A. -- "money until we paid the company."

03:57 15 "So, he wasn't supposed to do anything with that
16 money?"

17 "No. Not at that time, he wasn't."

18 "Well, when -- I don't understand that. What --"

19 "Okay."

03:57 20 "You gave him the money and said to hold it?"

21 "Put the money in a bank account. That's all you
22 have to do, is sit there with the money and hold onto the
23 money. I'm having a problem getting my coverage down. We may
24 have to give this money back."

03:58 25 Q. Now, stop for just a second, if you don't mind. I heard

Clark Cross of Carter

03:58 1 your direct; I heard your cross-examination. And it's not
2 quite the same characterization of what my client said and what
3 you said.

4 He's saying in his deposition that you were
03:58 5 pretty much told to just put this money -- hold it, it may have
6 to be given back?

7 A. Yes, sir.

8 Q. Thinking back, is that -- is that accurate with what you
9 recall or is it different?

03:58 10 A. I don't remember Mr. Swetnam saying, "We may have to give
11 this money back."

12 Q. Okay.

13 A. But I remember the rest of it pretty much like that.

14 Q. Okay. Fair enough.

03:58 15 And picking up on Line 14, Mr. Carter, if you
16 would start there, please, sir?

17 A. "And give it --"

18 "What would have been an event to cause you -- to
19 cause you to have to give the money back?"

03:58 20 "Not being able to get all the coverage down or
21 getting something placed."

22 "So, if the coverage had fallen through, you
23 would have to give the 936,000 back to the hospital?"

24 Q. Right.

03:59 25 A. "Yes, sir."

Clark Cross of Carter

03:59

1 Q. Keep going, please.

2 A. "Okay. And there comes a time when you gave Mr. Carter the

3 green light, 'Okay. You can keep the money.' "

4 "Yes, sir."

5 Q. Is it fair to ask whether you recall Michael at some point

6 coming to you and saying -- Michael Swetnam -- excuse me --

7 coming to you and saying, "It's taken care of" -- I think you

8 said that in your dialogue with him that you understood he was

9 going to try to fix this problem, right?

03:59 10 A. Yes, sir.

11 Q. Whatever the problem was, he was going to fix it?

12 A. Certainly.

13 Q. You understood him to be a pretty good insurance expert,

14 did you not?

03:59 15 A. Yes, sir.

16 Q. And then, contemporaneous to these events, we have, I

17 guess, 131. And you have some note in here about a meltdown at

18 the bottom here, "Letter to JGS regarding the meltdown." This

19 all happened at kind of the same period of time?

04:00 20 A. This would have been two days later, yes, sir.

21 Q. Now, a "meltdown" is a kind of a pejorative word. I mean,

22 it's -- I think about Three Mile Island and that kind of stuff.

23 Did he use the term "meltdown" or is that your

24 characterization?

04:00 25 A. Well, I put it in quotation marks. It's very possible that

Clark Cross of Carter

04:00 1 it's mine but --

2 Q. You just don't recall, do you?

3 A. It was just a note. Yes, sir.

4 Q. Okay. Now, just continuing -- and we're not going to have
04:00 5 that much more to read so just -- I apologize.

6 At the top of 227, let's pick up on Line 1 and
7 we'll take it down, if you don't mind, until -- really, where
8 it ends right here on the screen, Line 17. Could you read that
9 into the record, please?

04:01 10 A. Yes, sir.

11 "When was that?"

12 "Probably somewhere around the 13th of the
13 month."

14 "Of September?"

04:01 15 "Yes, sir."

16 "And your recollection is Mr. Carter received a
17 1099, specifically this amount?"

18 "For the 425, yes, sir."

19 "Why did you give Mr. Carter the green light on
04:01 20 September the 13th or thereabout to keep the money?"

21 "Because I had entered into a personal guaranty
22 on the 11th and the money was earned at that time."

23 "Okay."

24 "Although, technically, it hadn't been paid
04:01 25 because the checks were still bouncing. Hospital wrote a hot

Clark Cross of Carter

1 | check."

2 Q. Did you know at the time that Mr. Swetnam had resolved the
3 problem by issuing a personal guaranty? Did he have any
4 discussions with you about that?

5 A. No, sir.

6 Q. Now, again, I don't mean to be disrespectful; but from your
7 testimony, it sounds like your knowledge of the insurance laws
8 are not quite the same as Dave Smith or perhaps even Mike
9 Swetnam, the level?

10 A. No, sir, not even close.

11 Q. Do you know or have you ever heard in discussions with
12 these gentlemen whether or not a guaranty is the same as a
13 contract?

14 A. I don't know anything about the technical aspects of that.

15 Q. And do you know whether or not a guaranty can be considered
16 as an insurance contract?

17 A. No, sir, I do not.

18 O. That's a fair answer.

19 Later into the discussion about the 936, going

0 back to the bottom of 227, pick up, if you don't mind, and read
1 into the record Lines 22 through 25; and then I'm going to flip
2 the page. Okay?

23 A. Yes, sir.

24 "And, so, it is your testimony that -- did
25 Mr. Smith or Mr. Reagan share in any of the \$936,000?"

Clark Cross of Carter

04:03 1 And the answer is, "Yes."

2 Q. Okay. And then on the next page, on 228?

3 A. "How much?"

4 "I believe 50,000."

04:03 5 "Each?"

6 "No. Fifty thousand was what we had agreed that
7 we were going to pay the company, the agencies, 50,000."

8 Q. Okay. Not to be perhaps Clinton-esque --

9 THE COURT: Just a second.

04:03 10 Ladies and gentlemen, do I understand you can
11 stay a little bit later tonight?

12 Okay. We'll carry on.

13 MR. CLARK: Thank you, your Honor.

14 BY MR. CLARK:

04:03 15 Q. We'll go to Page 229 now. 229 picks up back again asking
16 my client, being questioned by Mr. Hanslik of Boyer and Miller,
17 about the check --

18 A. Yes, sir.

19 Q. -- the check that has been shown to the jury repeatedly.

04:04 20 Line 10, would you read that through to the end
21 of the page, please?

22 A. Yes, sir.

23 "That's a copy of the check that you gave to
24 Mr. Carter, correct?"

04:04 25 "Yes, sir."

Clark Cross of Carter

04:04 1 "And it's been marked as Exhibit 66?"

2 "Yes, sir."

3 "And it was written on the 5th and posted on
4 the -- the next day, on the 6th, right?"

04:04 5 "Yes, sir."

6 "And your testimony is, by the time you gave
7 Mr. Carter this check, he knew there was a problem with the
8 cover notes that were Exhibit 65?"

9 "That's why he was holding the money."

04:04 10 "And then your testimony is that when you found
11 out there was a problem with the insurance, you contacted
12 Mr. Springfield at the hospital?"

13 "Yes, sir."

14 Q. Okay. I'm sorry to do this to you, but just a -- just a
04:04 15 little bit more. On top of 230, would you read -- let's just
16 read it through Line 22, sir.

17 A. Okay.

18 "Who told you that there was a problem with the
19 cover notes?"

04:05 20 "I determined that about the 5th or 6th. Joe
21 told me that he couldn't get the deal together. I knew that I
22 had a melted down deal, and so I called -- I believe I called
23 Brent. Because him and Jim were out playing golf. I asked him
24 to put Brent on his phone, and he did. I told him, 'I've got a
04:05 25 problem.'"

Clark Cross of Carter

04:05 1 Looks like that should read, "I asked him to put
2 Jim on his phone and he did," since he called me but --

3 Q. Okay.

4 A. "So, the first time you informed Mr. Springfield about
04:05 5 this --"

6 "About the 6th -- 5th or 6th probably."

7 " -- was via phone?"

8 "The only time I informed him about it, yeah."

9 Q. Okay. I'm sorry. Just continue on down, please.

04:05 10 A. Okay. No problem.

11 "And he -- you called Mr. Carter and said, 'Hand
12 the phone to Mr. Springfield'?"

13 "They were golfing, I believe, that day, yeah."

14 "And that would have been about the 6th or 7th of
04:06 15 September?"

16 "Somewhere in there."

17 "5th or 6th?"

18 "5th or 6th, 6th or 7th."

19 Q. Would you golf frequently or infrequently with
04:06 20 Mr. Springfield?

21 A. I would call it "frequently."

22 Q. Do you have a recollection of whether or not you and he
23 were golfing in that period of time?

24 A. We certainly played probably a couple of times a week
04:06 25 during that period. I don't know about on the 5th or 6th of

Clark Cross of Carter

04:06

1 September.

2 Q. Would you carry a cell phone out to the golf course with
3 you when you would go golfing?

4 A. Always.

04:06 5 Q. Now, kind of think back for a second. Do you recall
6 Mr. Swetnam calling you on the golf course at any point in time
7 and saying, "I need to talk to Jim Springfield"?8 A. I don't know if I specifically remember him asking to speak
9 with Jim; but, I mean, the answer to the question would be he
04:07 10 called me pretty regularly on the golf course.11 Q. Okay. And then my client goes on, on Page 231, in answer
12 to some questions about this conversation with Springfield.13 Would you read, please, from Line 2 to the bottom
14 of the screen.

04:07 15 Let me see if I can get more of it here.

16 We can stop with, "Yes, sir." Just read that
17 into the record.

18 A. "So, you had that conversation with Mr. Springfield?"

19 "Yes, sir."

04:07 20 "Did you, during that phone call, negotiate the
21 terms of the guaranty to Mr. Springfield?"22 "I gave Mr. Springfield three or four options
23 real quickly."

24 "And what were those options?"

04:07 25 "One, he could get another agent to go find the

Clark Cross of Carter

04:07 1 coverage, which I didn't think there was anybody out there at
2 that time that could do it. One option was to buy a vendor's
3 dual interest, which would have cost probably somewhere between
4 20 and 25 million, which really wasn't a doable option on the
04:08 5 deal. Then, third option was do a guaranty; or fourth option,
6 you can have your money back."

7 Q. Okay.

8 A. "Those are the options you told him on the phone?"

9 "Yes, sir."

04:08 10 Q. And then, finally, on Page 233, this is kind of at the end
11 of this same line of questioning. You have, I guess, read the
12 deposition of my client at some point. You've admitted on --

13 A. Yes, sir.

14 Q. And you know that he talked about the fact being that he
04:08 15 understood that the hospital had to have at least \$225 million
16 of coverage to maintain the bond covenants, right?

17 A. Yes, sir.

18 Q. Okay. And, then, take a look at 233 and be kind enough, if
19 you don't mind, to read from Line 4 through Line 18, please.

04:09 20 A. "And you also told Mr. Springfield on the phone that he
21 could have the money back?"

22 "Yes, sir."

23 "Okay. After the phone call with
24 Mr. Springfield -- strike that.

04:09 25 "Did Mr. Springfield take any one of your options

Clark Cross of Carter

04:09

1 during that phone call?"

2 "He told me to fix this problem. That's the only
3 one."

4 "He just said, 'Fix it'?"

5 "'Fix it.'"

6 "What did you do next?"

7 "I did the guaranty."

8 "You drafted it?"

9 And I can't read the answer.

04:09

10 Q. Oh, I'm sorry.

11 A. "Yes, sir."

12 Q. Okay. And it goes on to say that, "Did you do it on your
13 laptop?"

14 He said, "Probably, yes, sir"?

04:10

15 A. Yes, sir, it says, "Were you at your rented office at
16 Smith-Reagan agency?"

17 "Probably, yes, sir."

18 Q. Ask you a little bit more about Mr. Springfield and the
19 type of person he was. Would it be consistent or -- excuse me.

04:10

20 Was he the kind of -- the kind of personality or
21 person, if you would, that would issue directives like that,
22 what we just saw, "Fix it"; would that be consistent or
23 inconsistent with your experience and knowledge of him?

24 A. That would be very consistent.

04:11

25 Q. I'm going to ask, I promise, one last line of questions

Clark Cross of Carter

04:11

1 here.

2 A. Sure.

3 Q. Page 234, this is referring to the cover letter that was
4 marked for the deposition. And let me see just in particular
5 if I could --

04:11 6 A. Okay.

7 Q. The cover letter is the subject of this discussion on
8 Page 234. I think we've seen that already. My client is
9 asked, "Did you send this to Mr. Springfield?"04:11 10 I would like you to read from Line 7, if you
11 will, down to -- let me see if I can get this situated here --
12 Line 7 on down to Line 20.

13 A. Okay.

14 "Did you send this to Mr. Springfield?"

04:12 15 "No, sir. I gave it to Carter, to Brent."

16 "And did you instruct him to give it to
17 Mr. Springfield?"

18 "Yes, sir."

19 "Did you ever sign a copy of this letter?"

04:12 20 "Yes, sir. The original was signed."

21 "And this was after you'd already split the money
22 with Mr. Carter, right?"23 "Mr. Carter had part of the money, yes, sir, on
24 the 5th. He had part of the money, but he didn't have part of
04:12 25 the hospital's money. He had my money from my banker."

McConnell Re-Cross of Carter

04:12 1 "And in this letter you're informing
2 Mr. Springfield that the coverage that you thought was there is
3 gone?"

4 "Yes, sir."

04:12 5 Q. That's fine.

6 A. I'm sorry. You said --

7 Q. No, that's fine.

8 Mr. Carter, I thank you very much.

9 MR. CLARK: I pass the witness at this time, your
04:12 10 Honor.

11 MR. COLVIN: Nothing further, your Honor.

12 THE COURT: Nothing further?

13 MR. McCONNELL: Your Honor, I have four questions.

14 THE COURT: All right.

04:13 15 MR. COLVIN: Your Honor, I would object to them doing
16 recross when I didn't do a redirect.

17 MR. McCONNELL: Your Honor, they introduced that
18 binder.

19 THE COURT: Yeah, I'm going to allow him.

RECROSS-EXAMINATION

21 BY MR. McCONNELL:

22 Q. Mr. Carter, do you see here where it says, "No, 50,000 was
23 what we agreed that we were going to pay the company, the
24 agencies, 50,000"?

04:13 25 "Did both agencies get 50,000?"

McConnell Re-Cross of Carter

04:13 1 "No. Just Smith-Reagan."

2 Do you see that?

3 A. Yes.

4 Q. Who is "we"?

04:13 5 A. I guess Mr. Smith, Mr. Reagan and Mr. Swetnam.

6 Q. But not you?

7 A. No, sir. I didn't make those decisions.

8 Q. Okay. Do you see where it says, "Did they" -- well --

9 Do you see where it says, "That was what --

04:14 10 that's why he was holding the money"?

11 And then it's, "Your testimony is that when you
12 found out that there was a problem with the insurance you
13 contacted Mr. Springfield at the hospital?"

14 "Yes, sir."

04:14 15 A. Yes, sir.

16 Q. Do you see that?

17 You deposited that check on September 5th or 6th,
18 correct?

19 A. I believe it was the 5th.

04:14 20 Q. The 5th. Did Mr. Springfield ever ask you about the lack
21 of insurance?

22 A. No, sir.

23 Q. Did he, Mr. Springfield, ever ask for the \$936,000 back for
24 that premium?

04:15 25 MR. COLVIN: Your Honor --

04:15

1 A. No, sir.

2 MR. COLVIN: -- I've got to interpose an --

3 THE COURT: Yes. This is --

4 MR. COLVIN: -- objection. This isn't about the
04:15 5 binder or anything that was done --

6 THE COURT: This seems outside the bounds of --

7 MR. McCONNELL: Your Honor, it goes towards -- that
8 notebook says that that letter was delivered to Mr. Springfield
9 on that particular day, listing those policies: Ariel,
04:15 10 Lansdown --

11 THE COURT: All right. All right. I think --

12 MR. McCONNELL: So, that's --

13 A. I think I said, "No, sir" to whatever your last question
14 was.

04:15 15 MR. McCONNELL: Thank you.

16 THE COURT: Is that it?

17 MR. McCONNELL: That's it, your Honor.

18 THE COURT: All right. You may step down.

19 THE WITNESS: Thank you, sir.

04:15 20 THE COURT: Right? Nobody had any more questions,
21 right?

22 MR. CLARK: Certainly not.

23 THE COURT: Okay. All right. Ladies and gentlemen,
24 thank you for your patience. Thank you for staying late with
04:15 25 us.

04:15 1 This is what I would like to do to avoid
2 unnecessary waste of your time. I would like you to plan on
3 being here by 10:00 o'clock tomorrow. If your schedule is such
4 you come in on the early bus, we'll be ready for you at 8:00.
04:16 5 We'll have food there; we'll have coffee there.

6 But we're going to have some lawyer business to
7 do, and I think 10:00 o'clock is a safer time than 8:00.

8 Would all please rise for the jury?

9 *(Jury not present)*

10 *(End of requested proceedings)*

11 * * * * *

12 COURT REPORTER'S CERTIFICATION

13 I certify that the foregoing is a correct transcript from
14 the record of proceedings in the above-entitled cause.

15 Date: June 8, 2010

17 _____
18 /s/ Cheryll K. Barron

19 Cheryll K. Barron, CSR, CMR, FCRR
20 Official Court Reporter

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